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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1917 1919

No. 481, 1[redacted]6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 6.

PLAINTIFF'S TESTIMONY.

FILED MAY 12, 1916.

VOLUME VI.

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TWENTY-SIXTH DAY.

Room 309, Federal Building,
Pittsburgh, Pennsylvania,

October 7, 1912.

The hearing was resumed at 10:30 o'clock a. m., before SPECIAL EXAMINER JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE and MR. REED.

WILLIS L. KING,

a witness produced by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Where do you live?

A. In Pittsburgh.

Q. How long have you lived in this part of the country?

A. All my life; I was born here.

Q. What is your age, Mr. King?

A. I am in my sixty-second year.

Q. In what business are you now engaged?

A. In the manufacture of steel.

Q. How long have you been engaged in the manufacture of steel, and before that, how long in the manufacture of iron—before the uses of iron were largely superseded by steel?

A. I have been connected with the Jones & Laughlin people for over forty years.

Q. What position do you now hold?

A. Vice-president of the company.

Q. What positions have you previously held, say for fifteen or twenty years back?

A. For many years, of course, I was in the commercial department, and then I was elected an official—vice-president.

Q. Have you been familiar during that period with the manufacture of steel and iron products?

A. More especially during the latter part of it.

Q. What part would that cover?

A. For twenty or twenty-five years, say.

Q. State whether or not heavy rails are the same, that is, whether there is any difference between heavy rails No. 1 and heavy rails No. 2, and if there is any difference, what their respective uses are.

A. The term No. 2 refers to second quality rails; that is, not standard in quality or finish.

Q. I am just asking you, if rails are designated as heavy No. 2, what that means.

A. That would mean that that was a heavy T rail for railroad purposes. There are a number of weights, you know—heavy and lighter.

Q. What do you understand heavy No. 1 to mean?

A. That is a term that I could not describe, other than that it is a rail of first quality and heavy weight.

Q. Are those general terms used in the trade?

A. I think not.

Q. The general term is "heavy rails" or "light rails?"

A. They are generally classed for railroad purposes as rails, and for purposes such as coal banks and lumber yards, light rails. That only means that they are lighter in weight, not so heavy.

Q. What is the difference, if any, between plates and sheared plates?

A. There are two classes of plates, known as "sheared plates" and "universal mill plates." The sheared plates are made in a mill in which the edges of the plates are sheared. The edges of the universal plates are made on a universal mill, so-called, in which the edges are rolled, horizontally and vertically.

Q. State whether or not the general term in trade "plates" includes the sheared plates also.

A. They are synonymous.

Q. How about tie plates; are they or not included under the general term of plates, in the market?

A. No, they are a special plate used by railroads to put under the rails to save the ties from laceration.

Q. Are they known in the market as plates?

A. No; as tie plates.

Q. What is the difference between "bars" and "bar steel?"

A. There is no difference.

Q. Are tin plate bars and sheet bars the same?

A. They are the same; made by the same process.

Q. State whether or not splice bars and angle splice bars are the same, or whether there is any difference.

A. Angle splice bars are only a form of a splice bar for rails. The old fashioned bar was a plain bar that only fitted up into the web of the rail and did not go down over the flange of the rail.

Q. Were they used for the same purpose, to accomplish the same purpose?

A. The same purpose.

Q. And sold to accomplish the same purpose, were they?

A. Yes, sir.

Q. State whether or not angles, beams, channels, flats, rounds and squares, Ts and Zs, come under the general designation of structural work?

A. I would not class bars in that category.

Q. I did not say bars; I said beams.

A. I misunderstood you. Those are generally termed structural material.

Q. And the general term of structural material would embrace those, would it?

A. It would embrace those.

Q. State whether or not there is any essential difference between blooms, billets and slabs, and the general term Bessemer billets, long and short.

A. They are made by the same process; it is only a dif-

ference in the size. They are all made on the blooming mill, semi-finished material.

Q. The bloom is an earlier stage, is it?

A. It is merely a larger size than a billet, technically known in the trade.

MR. REED: Excuse me for interrupting at this point, but Mr. King does not mean that all blooms, billets and slabs are Bessemer billets.

THE WITNESS: Oh, no.

MR. REED: That was the question.

THE WITNESS: Bessemer and open-hearth are the two grades of steel.

MR. DICKINSON: And they are all billets and blooms and slabs, are they?

MR. SEVERANCE: That has no reference to the process of steel making.

THE WITNESS: That is just the process of making them; that is rolling them on a certain mill, a blooming mill.

By MR. DICKINSON:

Q. What is the difference, if any, between tie plate slabs and plate slabs?

A. Only that they would be rolled into different material. The slabs themselves would not be any different. That is, they are made on the blooming mill. They would be finished in the finishing mill.

Q. Into tie plates?

A. Into a tie plate.

Q. It is just another stage of the process, is it?

A. Yes, sir.

Q. Is there any substantial difference between plate slabs and bar slabs? If so, what?

A. No, sir.

Q. How are they made; in the same or a different manner?

A. They are made in a different manner.

Q. There is a difference in size, or there may be a difference in size?

A. Depending on the size of the finished material that you wanted to produce.

Q. State whether or not there is any difference in the process of rolling heavy and light rails.

A. The heavy rail I should say was made on more modern, and as a rule better mills. The production is very much larger than in rolling the small rails.

Q. The machinery would be heavier, would it?

A. Yes, sir.

Q. But the process is essentially the same, is it?

A. Yes sir; the process is essentially the same.

Q. What is a tie plate?

A. A railroad tie plate?

Q. Suppose you see it designated in the market as a tie plate. What would you understand that to be? I believe, however, you have already described that.

A. Yes, sir.

Q. You have described it as a plate to fasten together the ends of the rails?

A. To set the rails on.

Q. That superseded the old-fashioned chair that the railroads used to use?

A. Yes, sir.

Q. What are the usual sizes of tie plates; how thick and how long?

A. To-day they are about 8 by 10 inches, and probably $\frac{1}{2}$ by $\frac{5}{8}$ of an inch thick.

Q. Can or not a mill that is equipped to roll slabs in general, of several sizes, roll tie plate slabs?

A. Not the same mill.

Q. You mean not the same rolls?

A. Not on the same rolls; and not in the same mill, either; because a mill that would roll the semi-finished material, blooms, billets or slabs, would not be suitable for rolling the smaller articles; that must be done on a different mill; a finishing mill, so-called.

Q. But can a mill be adapted to roll slabs in several sizes, and have among those sizes tie plate slabs?

A. No, sir.

Q. It requires separate machinery?

A. It requires a separate mill; yes.

MR. REED: Do you mean that as to tie plate slabs?

A. Tie plate slabs? I misunderstood you. They would be rolled on the same mill.

By MR. DICKINSON:

Q. It is merely a difference in the size of the slab?

A. Yes. I am much obliged for the correction, Mr. Reed. I thought he was talking about the finished plate and the tie-plate.

MR. REED: I knew you misunderstood the question.

By MR. DICKINSON:

Q. Is there or not any distinction between tin plate bars and sheet bars?

A. Only to the extent that a mill which rolled only sheets would call them sheet bars, and a mill that made tin plate would call them tin plate bars.

Q. The process is the same?

A. The process is the same, and they are practically the same size. Tin plate bars are a little lighter, perhaps.

Q. Can tin plate bars and sheet bars be used for common purposes?

A. Yes; either for sheets or plates, dependent on the size of the sheet and the weight you wanted to produce.

Q. State whether or not angle splice bars, and splice bars are competitive products.

A. They are used for the same purpose; but the plain splice bar has been superseded altogether by the angle splice bar, because it is a stronger and a better bar.

Q. But, at the time they were known in the trade, and before they were so superseded, they were competitive products?

A. They were used for the same purpose, if that is what you mean.

Q. That is, one could buy one or the other, and use it for the same purpose?

A. Yes, sir.

Q. Before the formation of the United States Steel Corporation in April, 1901, state which was the larger concern, the Carnegie Company or the Illinois Steel Company.

A. The Carnegie Steel Company.

Q. Did they or not roll larger sizes in the same products than the other?

A. They produced more tonnage.

Q. They produced more tonnage, rather than larger products?

A. Yes, sir.

Q. Please describe, rather fully, Mr. King, what is meant by the term "structural material." We have had that term pretty often, and I think it is desirable to get rather a full description of it from you.

A. The term structural material means a class of material, a shape of material, that is used for building some sort of a structure, whether a building, a vessel, or a bridge.

Q. Under that general term, state whether or not you would include beams, angles, channels, tees, splice plates for girders, etc.

A. I would say that list was a pretty full one. Those sections are a pretty full description of what is generally known as structural material; although I would not call tie plates——

Q. I did not say tie plates; I said tees. I said beams, angles, channels, tees and splice plates. You would not include splice plates?

A. I would not say splice plates, no.

Q. But the others you would include?

A. Yes.

Q. State whether or not at the time that the Carnegie Company and the Illinois Company were taken over by the United States Steel Corporation in 1901 and previous thereto they had been competitors in interstate commerce.

A. Yes, sir.

Q. Please state generally in what classes of products they had competed, and in what territories they had competed.

A. I think they largely made the same class of product, and their territory was largely the same, except that the Illinois Steel Company, as a rule, would not come a great dis-

tance east. It would be against the law of trade. The freight would be against them. But at other places they competed, I think.

Q. You said, "as a rule." I will ask you whether or not, previous to that time, concerns that were competitors of that character, while they might have had a territory that normally was under their control on account of freight rates, by reducing prices and getting into trade contest in that way, did go into each other's territory and compete actually in that territory, that, normally, would not be within their control on account of freight rates?

A. I think that is a correct statement, at certain times.

Q. Did or did not that occur in those times among those competitive companies?

A. Yes, it did, at times.

Q. Would you have called the Carnegie Company and the Illinois Company, in 1901, when they were taken over by the Steel Corporation, integrated companies? If so, I wish you would please explain a little fully what your idea is as to the meaning of the term "integrated" at that time.

A. Did you say "integrated" companies?

Q. Yes, sir.

A. What do you mean by that?

Q. Well, I wanted to see what you meant, if you had used the term.

A. No; I never heard them called by that name. They were entirely separate in organization and management, and, generally speaking, competitors.

Q. I did not mean to say that they were integrated with each other.

A. Oh!

Q. But whether each company, in the character of its works and its processes, from the raw material to the finished material, the adaptation of its machinery for economical production in that way, and in the control of ore, or in the transportation of ore, were what I have termed "integrated" in that sense. Do you understand the meaning of the term in that sense?

A. I think they were.

Q. They were, at that time?

A. In that particular sense.

Q. I believe you stated that the Carnegie Company was somewhat the larger of the two, at that time?

A. Yes, sir.

Q. Which did the larger structural manufacturing: the Carnegie Company or the Illinois Company?

A. The Carnegie Company.

Q. We have spoken of the various products of steel manufacture under these terms of structural material, bars, etc. Which designation covers the largest class of tonnage that goes into the trade?

A. Steel bars have the larger tonnage.

Q. Of all manufactures of that character?

A. Yes; they are more generally made.

Q. Is it or not adapted, generally, for more uses when it is put out into the trade?

A. Yes, sir.

Q. Just state how that is, Mr. King.

A. A bar means a piece of steel rolled into round, square, flat or hexagon shape; and it is used very generally in the manufacture of all classes of machinery—agricultural, the making of bolts, nuts, rivets, spikes, and a great variety of uses.

Q. And a larger tonnage of the iron products goes out into consumption in that form than in any other one form, as I understand you?

A. That is my understanding.

Q. State whether or not the Carnegie Company and the Illinois Steel Company, at times, sold large quantities of billets before the formation of the United States Steel Corporation.

A. I could not testify accurately as to the proportion of billets they sold, but, generally speaking, they did sell billets and blooms and slabs.

Q. Where were those sold, generally?

A. They were sold generally to other mills who did not have steel plants.

Q. And, generally speaking, where were those mills lo-

cated throughout the country? I mean, designate the territory in a broad way.

A. The great territory for raw material was, of course, in the Pittsburgh District for the Carnegie Company, although there were mills in Eastern Pennsylvania and in Ohio. In fact, a mill, wherever located, that did not have a steel plant and was rolling finished steel must, of necessity, buy the semi-finished material in the shape of a billet or a slab or a sheet bar.

Q. Those concerns were located variously in various states?

A. Yes.

Q. And sales were made variously in various states?

A. All over the country, yes.

Q. Mr. King, state whether or not you recall an occasion, prior to the formation of the United States Steel Corporation, when there was a sharp contest for trade between the Carnegie Company and the Illinois Steel Company, and what effect that had upon prices and in what the competition consisted.

A. I recollect some such unusual competition. I do not believe I can fix the exact date, Judge. It resulted, however, as it always does, in a reduction of prices.

Q. All along the line in which they manufactured?

A. Yes, sir.

Q. You say you cannot fix the date. Was it or not before the United States Steel Corporation was formed?

A. Oh, yes.

Q. State what was the character of that, from the point of severity in competition.

A. As I recollect, it was very severe competition for a time. Prices went to an extremely low point.

Q. State whether or not the Carnegie Steel Company, prior to its being taken over by the United States Steel Corporation, competed in the sale of billets in interstate commerce with the several companies that I shall now name; and you can say yes or no to each one, and that will save me the necessity for asking you the specific question separately in each instance.

MR. SEVERANCE: You are asking if the Carnegie Company competed with the ones you are now going to enumerate?

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. The Ohio Steel Company?

A. Yes.

Q. The Buhl Steel Company?

A. I would say yes to that.

Q. The Aetna Iron & Steel Company?

A. Yes.

Q. The Shoenberger Works, subsequently acquired by the American Steel & Wire Company of New Jersey?

A. Yes.

Q. If ever, when did the National Steel Company begin the manufacture of steel rails at the Ohio Steel Company's Youngstown plant?

A. Do you mean the date?

Q. Not the exact date; but state whether or not it was before the formation of the United States Steel Corporation.

A. Yes; I think so.

Q. That was done before that time?

A. As I recollect it.

Q. Mr. King, state whether or not, prior to the formation of the United States Steel Corporation, you knew, and if so, state in what way you knew it, of any announcement coming from the Carnegie Company that they planned building a plant at Conneaut, and what character of plant.

MR. SEVERANCE: I object to that. It calls for hearsay or rumor, as was the case with other witnesses who have been interrogated on the same subject.

(By request the stenographer repeated the pending question, as follows:)

"Mr. King, state whether or not prior to the formation of the United States Steel Corporation you knew, and if so, state in what way you knew it, of any announcement coming from the Carnegie Company that they planned building a plant at Conneaut, and what character of plant."

THE WITNESS: I heard such statements; that is, I could not say that I heard them. It was a matter of common knowledge, or common rumor.

MR. SEVERANCE: It was a matter of rumor?

THE WITNESS: Yes. I do not know personally that that was officially announced. That is what I mean.

By MR. DICKINSON:

Q. State whether or not it was a matter of general report among iron and steel men at that time in this vicinity.

A. Yes, sir; it was.

Q. And a matter of common talk and gossip?

A. Yes, sir.

Q. Did the Carnegie Company sell tin plate bars before its absorption by the United States Steel Corporation?

A. Yes, sir.

Q. How about the National Steel Company?

A. They also did.

Q. State whether they sold those in competition in interstate commerce with each other.

A. I should think they did; I should say they did.

Q. I asked you about the general report and common talk as to the Carnegie Company building a plant at Conneaut, but you failed to say what kind of a plant it was.

MR. SEVERANCE: Same objection.

A. As I recollect, it was a plant for the manufacture of tubes and pipes.

By MR. DICKINSON:

Q. And what do you say as to the extent and character of the plant, in point of size and modern construction?

MR. SEVERANCE: Same objection.

A. I recollect it was to be a very modern and large plant.

Q. Mr. King, state whether or not you had personal knowledge of the existence of associations known as the Structural and Plate Associations.

A. Yes, sir; I had knowledge of them; I was the treasurer.

Q. The treasurer of both of them?

A. The treasurer of both of them.

Q. Did you attend the meetings of either or both of them?

A. Very generally.

Q. Representing yourself individually, or your concern?

A. Representing our concern, our company.

Q. About when did these associations begin?

A. The Plate Association was formed, as I recollect it, in November, 1900; the Structural Association, the last one, I might say, perhaps a year or two before then—perhaps 1897 or 1898.

MR. SEVERANCE: Which was formed in 1900?

THE WITNESS: The Plate Association.

By MR. DICKINSON:

Q. How long did those meetings continue under that kind of organization that you speak of?

A. Until the latter part of 1904.

Q. State whether or not in the operation of that association——

MR. SEVERANCE: Which one are you speaking of?

MR. DICKINSON: To save time, I am speaking of both associations.

By MR. DICKINSON:

Q. (Continuing) there was an apportionment, among the parties who were cooperating and acting together under those associations, of a percentage of product. Just explain how that was, please.

A. These companies, some six or eight, I should say, were apportioned such a percentage of the total tonnage as they had shown themselves able to produce, say in two or three years previous; that is, that was taken as the basis for the percentage of the whole they were entitled to.

Q. And each one was allotted the right to sell that percentage?

A. Yes, sir.

Q. Now, suppose any one of the members of that association exceeded that allotment; what was done, if anything?

A. There was a penalty per ton on such excess, which was paid, in turn, to those who had not shipped their allotment.

Q. Who were the members of the Structural Association, what producers or manufacturers?

A. The Illinois Steel Company, A. & P. Roberts, Cambria Steel Company, Lackawanna Steel Company, Jones & Laughlin. You asked about the Structural Association?

Q. Yes.

A. That covers them.

Q. Of those people engaged at that time in the United States in the production of that character of product, what percentage did those, acting together in the way you have described, amount to, of the whole product of the United States?

A. Well, quite a large percentage; I would say 90 per cent.

Q. Who were the members of the Plate Association?

A. I do not know that I can name them all. I will try to. Have you not a list of them there?

Q. Just name those that you can recall.

A. The Carnegie Steel Company, Illinois Steel Company, Otis Steel Company, Worth Brothers Company, Lukens Iron & Steel Company, Cambria Steel Company, Jones & Laughlin Steel Company.

Q. If there were any others, you do not recall them?

A. If there were any others, they were not very considerable.

Q. Of those acting together in the Plate Association and cooperating in the way you have described, what percentage did they constitute of the total capacity of those products at that time in the United States?

A. Probably about the same per cent.

Q. In the Plate Association what percentage was allotted to the Carnegie Company?

A. As I recall, something between 45 and 50 per cent.

Q. And what percentage to the Illinois Company?

A. Ten or eleven per cent.

Q. In the Structural Association, what percentage was allotted to the Carnegie and the Illinois Steel Co.?

A. Practically the same as in the Plate Association.

Q. In each of the two associations?

A. I think so.

Q. If any one took a special initiative or leadership in getting up the Plate Association, please state who it was.

A. My recollection is that it was Mr. Schwab.

Q. Speaking of the Plate Association, at those meetings, down to 1904, I believe you said, who attended from time to time representing the Carnegie Company?

A. Mr. Bope. My recollection is that he alone attended.

Q. In the Plate Association who represented the Illinois Company?

A. Mr. George Baker, general sales agent.

Q. In the Structural Association, who represented the Carnegie Company, so far as you recall?

A. The same gentlemen represented both.

Q. After this period came in 1904, when you discontinued the meetings of those associations that you have described, state whether or not there were subsequent meetings of those engaged in the manufacture of structural material and those engaged in the manufacture of plates.

A. There were meetings, as we thought, in a less objectionable form than the other organization.

Q. Did you have any written agreement in those meetings?

A. No written agreement.

Q. Did you keep any minutes?

A. No.

Q. There was no penalty?

A. And no penalty——

Q. Did you have a treasurer?

A. Well, a treasurer so far as actual expenses and salaries were concerned, but nothing more.

Q. You say there were no penalties?

A. No penalties and no percentages.

Q. Taking up the Plate, who attended those subsequent meetings?

A. The same gentlemen.

Q. How often did those meetings occur?

A. I would think generally about every sixty days.

Q. Taking the Structural, who attended those meetings?

A. Well, the same gentlemen attended both, right straight

through, and the meetings were generally held on the same day, for convenience sake.

Q. So, with the difference in procedure, the personnel was the same in both?

A. Yes.

Q. What was the object of the continuance of these subsequent meetings?

A. The object was to obtain a certain stability in prices, although, as a matter of fact, those subsequent meetings, especially during the entire years of 1906 and 1907, were occupied in preventing the price going to an unreasonable figure; in other words, in holding the price down, rather than putting it up.

Q. There had been a greater demand for products, had there?

A. Yes.

Q. What was the fundamental idea of such meetings, when the demand was below the capacity?

MR. SEVERANCE: I object to that as incompetent. The question properly should be as to what these men said to each other. I do not think Mr. King's idea as to what the fundamental purpose of such meetings was would be proper, or his impression of what was in somebody else's mind as to the purpose of the meetings.

By MR. DICKINSON:

Q. You have stated, Mr. King, that in 1906 and 1907 prices were up, and the main function performed was to keep them steady and at a constant figure.

MR. SEVERANCE: He did not say that.

MR. DICKINSON: Let us see what he did say.

THE WITNESS: I said that during 1906 and 1907 the object of those meetings on the part of the larger concerns was to prevent such an unusual or such an unreasonable advance in prices as to cut off the consumption and thereby be a detriment to the business.

By MR. DICKINSON:

Q. State whether or not those meetings accomplished that purpose.

A. They did accomplish it, yes. Prices, in my opinion, would have gone from five dollars to ten dollars a ton higher, temporarily, if it had not been for those meetings.

Q. It was a rising market, was it?

A. A very strong, active market.

Q. And there was a great demand?

A. A great demand.

Q. In previous times, when the demand had been short of the production, what was the object and effect of those meetings?

A. The object of the meetings was to obtain, if possible, a fair and reasonable price.

Q. In one instance, you have described the purpose and effect as being to keep prices from going unreasonably high.

A. Yes, sir.

Q. State whether or not prior to that, when the demand was less than the production, the object and effect was to keep prices from going lower.

A. I think perhaps that is a fair assumption.

Q. Is that a fair statement?

A. That is a fact, yes.

Q. At these meetings, which I have described as subsequent meetings, that is after the latter part of 1904, just state what was said and what was done by those who were there at those meetings.

A. The object——

Q. I am not asking now for the object; I am asking what was said and done.

A. These formal proceedings we were advised and became convinced were not lawful, and we endeavored to meet in a way that would not conflict with the law. That is to say, we did not want to conflict with the law, and met subsequently to discuss present and future business conditions and to talk about the rate of production that each was producing at that time and the prospects for the future, and as a rule we of course talked about prices.

Q. You understood that you could not make a written agreement?

A. Yes, sir.

Q. You understood that you could not allot an apportionment of production?

A. Yes.

Q. You understood, did you, that you could not provide for the payment of penalties?

A. Yes, sir.

Q. Mr. King, when you, at these meetings, discussed prices, state what was said and what was done in regard to prices, and whether or not any understanding was reached, and if so, explain fully just what the facts were.

A. Well, after discussing the question of prices, the consensus of opinion generally arrived at was that a certain price represented a fair market price, and that was understood to be the market price, by those who were at the meeting.

Q. You say it was understood to be a market price. Do you mean the price that was to be when you left the meeting or not?

A. At the time we were meeting, yes.

Q. If any time was understood for the continuation of that price, state how that time was limited.

A. There was no fixed time for any price to stand as the market price, but, if market conditions changed materially, some one of the members, as a rule, asked for a meeting, and it was taken up again.

Q. Was it understood that some member would ask for a meeting if conditions changed?

A. No, there was no understanding about it, but they always did.

Q. What was the understanding upon your part as to what others would do and what you expected them to do, in regard to the price that you would charge?

A. Well, I attempted to sell for my company our products at the market price, if I could do it, and if I could not do it, then I asked for a meeting to discuss the question.

Q. State whether you continued to sell at that price until there was a meeting.

A. Yes.

Q. From what was said and what you did, did you understand that they expected you to follow that course?

A. Perhaps all of them did not.

Q. You mean all of them did not follow it?

A. No.

Q. I am not speaking of what all actually did, but when you, as representing Jones & Laughlin, stated what your price would be, did you or not give it to be understood that you would continue that price until there was another meeting?

MR. SEVERANCE: Objected to as leading, incompetent and irrelevant. Mr. King has told you very frankly what was said and done, and it is not fair to put questions to him in a form where he is obliged to say yes or no.

THE WITNESS: I would say in a general way that the object of those meetings was, without any question, to bring about a stability in prices, except during the time that I have spoken of in 1906 and 1907, when the boot was on the other leg, and we felt it was a matter of good policy to keep the prices down.

By MR. DICKINSON:

Q. Well, that was stability in another way, was it not?

A. Yes, that was stability in another way, perhaps not as objectionable.

Q. State whether or not from these meetings generally — I am not speaking now of some individuals, how individuals may have acted, but generally among those there, after one adjournment until another meeting was called, whether these prices were maintained as announced there.

A. As a rule they were.

Q. You have stated that you had advice to the effect that you could not do as you had done before in some respects. That is correct, is it?

A. Yes, sir.

Q. And you started off under a new plan. Now state whether or not, as the meetings progressed, you adhered to the lines of that new plan as they had been first indicated,

or whether or not you proceeded further in the line of understanding and agreement.

A. As compared with the formal arrangements—

Q. After these formal agreements that you have spoken of, in 1904, were abandoned, what were you advised that you could do?

A. We were advised that we had a constitutional right, if you please, as manufacturers, to meet together to discuss our business and talk of the tonnage that the country was consuming or that we were producing, and to individually say to each other what we were charging for our various classes of product, and I think perhaps what we proposed to charge, individually.

Q. Are you certain of the last point?

A. I am not certain as to the legal features of it.

Q. But you are on the other point?

A. Yes.

Q. You did exercise your constitutional right of meeting, did you?

A. I think we did; yes.

Q. You did interchange information as to the tonnage?

A. Yes, sir.

Q. You did interchange views as to what prices you were then charging?

A. Yes, sir.

Q. Did you make any announcements as to what prices would be?

A. After everybody had talked at a meeting, I think as a rule the consensus of opinion agreed on a certain price as the market price.

Q. And, as I understand you—please correct me if I am wrong—in addition to what you have stated, you left expecting others to rely upon your selling at that price until there was another meeting or until you called a meeting?

MR. LINDABURY: I object to that. The witness has not said that.

MR. DICKINSON: What part do you think I am wrong about? Well, I will modify the question.

By Mr. Dickinson:

Q. As the meetings progressed did you, to any extent, depart from the lines that you had been advised were legal?

A. No; except that the conditions changed in 1906 and 1907 so that, as I have already told you, we were endeavoring to keep the price down to a reasonable price, rather than to put it up.

Q. Were you advised, Mr. King, that in addition to meeting, and in addition to exchanging information as to the tonnage of production, and in addition to stating what price you were charging, and in addition to individually announcing what your price would be, you could proceed further, and interchange views and announcements until you reached a common price, and then could adjourn and maintain that price until there was a call for another meeting, or a change of conditions which would justify a call for another meeting? Were you advised along that line?

Mr. Severance: That is objected to as leading and incompetent.

The Witness: I do not think that I could answer that question intelligently, except to say that the general object of these meetings was to have a stable market, to prevent the price from going too high or too low. That was the object. Morally, I would have felt bound to have advised these meetings if I proposed to make a radical change in price, or any change in price; but others did not seem to think so.

Q. You say "others"? You mean some others?

A. Some others, yes.

Q. How about the majority of the reputable men, the larger producers in there? How did they act?

Mr. Severance: I think you probably would not want Mr. King to separate the sheep from the goats as to who were reputable and who were not reputable, Judge?

Mr. Dickinson: I am not asking for the names.

Mr. Severance: We shall have to ask who were reputable and who were not, if you insist on an answer to that.

Mr. Dickinson: I do.

MR. SEVERANCE: I do not believe he will answer it. I do not think he can.

MR. DICKINSON: I think he will. He has tried to answer all questions, to the best of his ability.

MR. SEVERANCE: I do not think he can.

(By request, the stenographer repeated the pending question, as follows:)

"Q. How about the majority of the reputable men, the larger producers in there? How did they act?"

MR. SEVERANCE: That is objected to as incompetent and irrelevant.

THE WITNESS: If I must answer that I would say that, generally speaking, the larger concerns maintained the price better than the smaller ones; the larger ones; not the largest, but the larger ones.

By MR. DICKINSON:

Q. Specify which were the larger concerns that did this.

A. Well, in the plate—

Q. (Interposing) In both.

A. They are practically the same in both. I would say that the Carnegie, Illinois, Cambria and Jones & Laughlin companies were the larger of the companies represented there.

MR. SEVERANCE: That answer would seem to be objectionable, because it is not responsive. Counsel asks for the reputable ones, and the witness answers as to the larger ones. The larger one is not always the reputable one.

MR. DICKINSON: That is what we are contending in this case.

MR. SEVERANCE: I think he intends to convey the idea that the larger ones were the reputable ones.

MR. REED: Judge Dickinson said that question was going to be answered, but the witness is not answering it.

(By request, the stenographer repeated the question under discussion, as follows:)

"Q. How about the majority of the reputable men, the larger producers in there? How did they act?"

MR. DICKINSON: You see, I made them interchangeable terms. I put them in apposition with each other.

MR. LINDABURY: The question only asks in regard to the majority of them, anyhow.

By MR. DICKINSON:

Q. How long did those meetings continue under that new regime or dispensation?

A. The interest in those meetings decreased as the market became stronger and stronger, and I think they were discontinued, perhaps, in 1907; that is, as a formal organization.

Q. Mr. King, state generally whether there was any occasion for such meetings when the market was strong.

A. I have given you the reason that we thought a good one. The steel manufacturers have found by experience that an unreasonable price shuts off the consumption; and we were just as much interested in having the price a reasonable one as ever before.

Q. Do you know whether any of those meetings continued after November 20, 1907?

A. No, sir; they did not.

Q. Why did they not continue after that, if you know?

A. The panic came on in the latter part of 1907, and the exigency was so great that a meeting of the entire steel and iron trade was called in New York on the 20th of November by Judge Gary.

Q. What kind of a meeting was that?

A. That was a meeting to discuss, primarily, the panic and the effect that it would have on business; and the object of the meeting, as I understand it—I did not know anything about it until I was invited—was to urge or advise manufacturers generally not to allow the financial panic to get into business generally; in other words, it was a general attempt to prevent the steel manufacturers from losing their heads and giving away their business.

Q. Giving away their business in what manner?

A. By a sudden and unreasonable drop in prices, which would affect adversely all buyers of steel, and, indirectly, banks who had their obligations.

Q. Do you or not mean by going into sharp competition with each other in prices?

A. The general effect of a panic is that prices go down immediately.

Q. But when you spoke there of "giving away their business," state whether or not you meant by going into sharp competition on prices.

A. That was an awkward sort of term. I would rather put it "to conserve their business."

Q. To conserve it how?

A. I do not know that I can explain it better than by saying not to allow the panic to get in their business and adversely affect not only their own business, but the manufacturing and commercial interests of the country.

Q. "Get into their business" so that it would manifest itself in what way?

A. In preventing a sharp and unreasonable reduction in prices.

Q. Were you or not at that meeting?

A. Yes, sir.

Q. Where did that meeting take place?

A. At the Waldorf Hotel.

Q. And what was the occasion there? Was there any sort of an entertainment?

A. Judge Gary invited the steel manufacturers to a dinner, and this matter was discussed at the dinner.

Q. State what proportion of the steel and iron trade of the country was represented at that meeting.

MR. LINDABURY: Would you mind getting the date of that, Judge?

MR. DICKINSON: He said 1907.

THE WITNESS: November 20, 1907.

(By request, the stenographer repeated the pending question, as follows:)

"Q. State what proportion of the steel and iron trade of the country was represented at that meeting."

THE WITNESS: Oh, probably 90 per cent. or more.

By Mr. Dickinson:

Q. Was there any record made of that meeting or the proceedings, by a stenographer?

A. I do not happen to know. I have not got such a record, if there was one.

Q. Do you recall whether any stenographer was there and took down the proceedings?

A. I do not recall.

Q. State whether or not, as an outcome of that meeting, an advisory committee was appointed, who appointed it, and who were the members of it.

A. There was a very general discussion of conditions at that meeting, and as a result a motion was made, by whom I do not recollect, to appoint an advisory committee of five, with power to increase its membership or to appoint subcommittees, who should act as an advisory committee, to whom any one could go for advice or information in regard to the panic and the conditions that surrounded the steel trade at that time.

Q. Was there an advisory committee appointed?

A. Oh, yes; it was appointed.

Q. Who were the members of that committee?

A. Mr. William E. Corey, Mr. Powell Stackhouse, Mr. E. C. Felton, I was on it, Mr. Willis L. King, and one more.

Q. Do you know whether Mr. Schwab was then or at a later time a member of that committee?

A. Mr. Schwab was later a member of the committee. Mr. Schwab and Mr. Bailey were added to the committee later.

Q. What are Mr. Bailey's initials?

A. Mr. Edward Bailey, of Harrisburg.

Mr. Severance: With what concern is he connected?

The Witness: With the Central Iron & Steel Company, a plate concern at Harrisburg.

By Mr. Dickinson:

Q. Have you mentioned Mr. Gary as a member of that committee?

A. I do not believe I did. He was a member of the committee.

Q. Did you mention Mr. Felton?

A. Yes.

MR. SEVERANCE: You say Mr. Gary was a member?

THE WITNESS: Judge Gary, yes.

By MR. DICKINSON:

Q. State whether or not that general committee appointed sub-committees, and, if so, in what branch of the trade.

A. For the purpose of keeping in closer touch with the business, that advisory committee thought it best to appoint sub-committees covering the different iron and steel products, and they appointed those committees, covering practically every line of steel products made.

Q. Were you a member of any of those sub-committees?

A. As I recollect, I was the chairman of the steel bar committee, and possibly a member of one or two others.

Q. How about the structural material committee?

A. I think perhaps I was.

Q. And how about the committee on billets and sheet bars?

A. Yes; I was not the chairman, but I was a member of the committee.

Q. Who were the members of the steel bars committee?

A. I could only say from memory, Judge. I intended to bring along a list of all those committees that I had up at the office.

Q. I will mention some names, and you can say whether or not they were members.

A. Yes.

Q. I believe you said you were the chairman of a committee?

A. The steel bars committee.

Q. Was John A. Topping a member?

A. Yes.

Q. Was W. G. Park a member?

A. Yes.

Q. Representing the Crucible Steel Company?

A. Yes.

Q. Mr. Fred Krebs?

A. Yes, sir.

Q. State what company he represented?

A. The Cambria Steel Company.

Q. Now, let us come to the committee on structural materials. State whether or not Mr. Schwab, of the Bethlehem Steel Company, was a member of that committee.

A. I rather think he was chairman.

Q. Was Mr. Powell Stackhouse a member of that committee?

A. He was.

Q. He was from the Cambria Steel Company, was he?

A. He was president of the Cambria Steel Company.

Q. You have stated that you were a member?

A. Yes.

Q. How about E. J. Buffington, of the Illinois Steel Company?

A. I think he was.

Q. Now, the committee on billets and sheet bars: Do you recall who the chairman of that committee was?

A. No, sir; I do not.

Q. Do you remember whether Mr. Topping was or not, of the Republic Iron & Steel Company?

A. The committee on billets and sheet bars?

Q. Yes.

A. Mr. Topping probably was. He makes those articles.

Q. Was E. C. Felton a member of that committee?

A. Mr. Felton, I would think, was.

Q. And A. C. Dinkey?

A. Yes, sir.

Q. E. A. F. Clark, of the Lackawanna Steel Company?

MR. SEVERANCE: Do you know about these men? Do you carry all of these names in your mind, or are you simply assenting to what Judge Dickinson says, so that he is really the witness?

THE WITNESS: I do not, but I happen to know that he took a list of those names out of an article in the Iron Trade Review, giving those committees, which I intended to bring

down. I could not remember each individual member of the committees.

MR. SEVERANCE: That is what I thought. I thought you were not testifying.

THE WITNESS: Oh, no. I could not remember them all individually; but I have no doubt they are correct.

MR. LINDABURY: We may not have either; but the question is in regard to your memory of these names.

MR. SEVERANCE: We may not doubt that they are correct; but it is not proper to have you asked to assent as to a matter about which you do not know.

MR. COLTON: Then why did you not object before?

MR. LINDABURY: It is not agreeable to be objecting all the time because witnesses are being led. Instead of a witness being asked what he knows, he is asked if so and so is not the fact.

MR. DICKINSON: I want to ask Mr. King a question.

By MR. DICKINSON:

Q. I will ask you whether or not these names were shown to you, and whether or not you then stated to me that your recollection was that these were the members.

A. Yes.

MR. LINDABURY: I object. You cannot cross-examine your own witness, or inform him.

MR. DICKINSON: I think I have the right to do that in view of the suggestion that has been made. I have not attempted to help the witness out at all.

MR. SEVERANCE: You were not attempting to do it; you were doing it.

MR. DICKINSON: With a statement like that, I think I have a right to show that the witness gave me the impression that he did know.

MR. LINDABURY: There is no suggestion of any improper motive on your part, Judge, but it is a practice that is contrary to law, as we understand it.

By MR. DICKINSON:

Q. I will ask you if you remember, as a matter of memory, thinking it over now, yourself, independently of the

names that have been called off to you, who were the members of the steel bars committee. I think you have already said that you were the chairman.

A. Yes.

Q. Do you remember that?

A. I remember calling some meetings.

Q. Who were the members that attended those meetings, if you know?

A. I know who were likely to attend, Judge.

Q. Who were the members of the committee who were likely to attend, so far as you yourself now recall?

MR. LINDABURY: I object to that as speculative.

THE WITNESS: To ask me to give the exact names of those who attended a certain meeting—

MR. LINDABURY: (Interposing)) We do not criticise you at all, Mr. King. We simply want your recollection.

By MR. DICKINSON:

Q. Without regard to attendance—because I do not expect you to remember the name of each particular person who attended each particular meeting—state if you now know who were the members appointed to that committee of which you were the chairman?

A. To the best of my recollection, Mr. Topping, Mr. W. G. Park, Mr. Powell Stackhouse; and I feel sure there was some representative from the Carnegie Steel Company who was there, but I do not recollect who it was.

Q. Somebody from that company was a member?

A. Undoubtedly.

Q. State whether or not there was any plan or arrangement or understanding by which these subcommittees were to meet, prior to the Gary dinners; and, if so, where they would meet.

A. I do not recollect that there was any date fixed for those meetings. I do not think there was. The chairman of the subcommittee, as a rule, fixed the date. He called the meeting when he thought it was desirable.

Q. Are you speaking, now, of a meeting of the producers or the members of the committee?

A. The subcommittees appointed in these various lines. I say there was no fixed date for their meeting.

Q. You understand I am not asking, now, about any meetings of any producers, if any, held under the auspices of those committees, but in regard to the meetings of the committees themselves.

A. The advisory committee?

Q. The subcommittees.

MR. SEVERANCE: That is what he has already answered to. He said there was no date fixed for those meetings; that they were called by the chairman.

THE WITNESS: There was no date fixed for them.

By MR. DICKINSON:

Q. Did they meet?

A. Yes, they met a few times; I should say two or three, as I recollect. I speak more particularly of the bars committee, of which I was chairman, and charged with the duty of holding the committee meeting.

Q. State whether or not these meetings of the subcommittee preceded or followed the dinners that were given by Mr. Gary.

A. I think, as a rule, those meetings were called when it would be convenient for us all to be in New York, and that was probably prior to a general meeting of the manufacturers, or a Gary dinner, if you choose to call it that.

Q. State whether or not the subcommittees made any report to the general committee.

A. Only in a very general way, as to the stability or lack of stability of the market and what they had hoped to accomplish and had accomplished, perhaps, in the matter of meetings of these special committees with the manufacturers in those lines.

Q. Mr. King, were you at a dinner or luncheon given on February 18, 1909, in New York?

A. I was.

Q. Who was present at that meeting?

A. Most of the principal manufacturers of steel.

Q. Who presided at that dinner or luncheon—which was it?

A. It was a luncheon.

Q. Who presided at it?

A. I would say Judge Gary.

Q. If Judge Gary made any statement at that meeting regarding the future action of those who were there, state what it was.

A. Judge Gary stated, as I recollect, that the conditions were such that he felt the United States Steel Corporation might now act independently in the matter of prices: in other words, I took it from his statement that the effects of the panic had disappeared, and that the natural laws might go into effect.

MR. SEVERANCE: You do not mean that Judge Gary made that latter remark?

THE WITNESS: No; that is my impression.

MR. DICKINSON: That is all.

CROSS EXAMINATION,

By MR. SEVERANCE:

Q. Mr. King, were the proceedings of this luncheon which you have just mentioned taken down in shorthand by any stenographer?

A. I think so.

Q. And published?

A. Yes, sir.

Q. So that whatever Judge Gary said may be best shown by that report, rather than by your recollection?

A. Surely.

Q. You have had a copy of that report, have you not, and have read it since?

A. I looked for it the other day, but I did not find it. I have some reports of the dinners; a number of them.

Q. You have, however, had that report since the time of the meeting?

A. Oh, yes; I think so.

Q. And you have read it?

A. Yes, sir.

Q. You did not find anything in that published report that differed from your recollection of what was said, did you, when you read it over; it impressed you as being what you had heard there at the meeting, as a correct report?

A. Exactly; although I have not read it lately.

Q. I mean when you did read it?

A. I did not find anything wrong with the report, as I recollect.

Q. You did not find anything left out?

A. No, I did not.

Q. You did not find anything left out that had been said by anybody at the meeting?

A. I think not.

Q. Either by Judge Gary or by any one else?

A. No.

MR. DICKINSON: Will you give us a copy of that report?

MR. SEVERANCE: I shall try to find it. I have not got it with me.

By MR. SEVERANCE:

Q. Mr. King, you said that you had formerly been the treasurer of the structural material and plate pool?

A. Yes.

Q. And that the plate pool, as you remember, was formed in 1900, and the structural pool in 1897 or 1898?

A. Yes.

Q. You are certain, are you not, that both of those pools were formed previous to the organization of the United States Steel Corporation?

A. I am.

Q. And no such pool was formed, either structural or plate, after the organization of the United States Steel Corporation?

A. No, sir.

Q. And the pools continued as sort of hang-overs until about 1904?

A. Yes, sir.

Q. Is it not a fact that when these pools were abandoned

in the fall of 1904, as you have stated, the initiative of looking to the abandonment of such pools was taken by Judge Gary?

A. It was.

Q. And Judge Gary advised you and the other gentlemen connected with those pools that he had been advised by counsel in whom he had confidence that those associations were in violation of the Sherman Law?

A. Yes, sir.

Q. That is a fact, is it not?

A. Yes, sir.

Q. And you also took the advice of counsel on that same subject?

A. Yes.

Q. And were advised that those pools were unlawful under the Sherman Act; is that right?

A. Yes, sir.

Q. Now, you say that after those associations were wound up, you continued with some of the same gentlemen who had been members to have meetings from time to time?

A. Yes, sir.

Q. At which you discussed trade conditions and the state of the market and prices prevalent, and the prices that you gentlemen, each speaking for himself, regarded as fair and proper market prices under existing conditions?

A. Yes, sir.

Q. That is a fact, is it not?

A. That is a fact.

Q. You had been carefully advised, and endeavored, to the best of your belief, and did to the best of your belief, conduct your business, after the dissolution of those associations and pools, in an entirely lawful manner, did you not?

A. I do not believe I could say that that was so until, say, 1907; but I am very well satisfied that nothing possible was done that would interfere with any act or law after 1907.

Q. That was 1907?

A. Yes.

Q. And between 1905 and 1907 you were endeavoring to

follow out the advice of counsel, as you understood it, but you were not entirely certain that you did it in all respects?

A. That is correct.

Q. That is all you intended to say in answer to Judge Dickinson?

A. Yes, sir.

Q. But from 1907 on, you are entirely satisfied that every act that was done by you and every other man in the business, so far as you know, having regard to this subject that is under investigation here, was done in a lawful and proper manner, as you were advised by counsel?

A. That is my belief.

Q. And if you made any mistake you did not intend to do so?

A. That is right.

Q. At these meetings that you have mentioned, in which these different gentlemen were present, there was some one representing the Lackawanna Company?

A. Yes.

Q. I am speaking of meetings that followed the dissolution of the pools and the associations of 1904, from that time on.

A. Yes, sir.

Q. And there was some one representing the Cambria?

A. Yes.

Q. And the Pennsylvania Steel?

A. No; they did not make structural and plates.

Q. They did not make structural and plates?

A. They made them for their own bridge work, but they did not sell in the market.

Q. Bethlehem?

A. Bethlehem, yes.

Q. Jones & Laughlin?

A. Yes.

Q. Carnegie?

A. Yes, and Illinois.

Q. That is all?

A. You are speaking of the structural and plates?

Q. Yes.

A. Of course, there were plate manufacturers who were not structural manufacturers.

Q. Then there were certain others, in addition, who met in the meetings, concerning plates?

A. Yes, sir.

Q. Is it not a fact, Mr. King, that at those meetings it was thoroughly understood and stated that you gentlemen there present could not agree with each other upon prices that you would charge for your product?

A. You are speaking now about subsequent to or before 1907?

Q. Either one.

A. Well, as I have testified and told you, that was the plan upon which we tried to operate after the formal association, but I did say that I did not think that that was at all times adhered to; but subsequent to 1907 what you say is exactly true.

Q. Then, beginning with the meetings you had in 1907—

A. (Interposing) They were really in 1908.

Q. Yes, after the first Gary dinner. That is what you refer to now?

A. Yes.

Q. You understood thoroughly, every man there understood thoroughly and acted upon that understanding, that he could not lawfully agree with the other gentlemen present upon the prices that they would make and maintain upon their goods; is not that a fact?

A. I heard that stated, and I stated it myself at every meeting I was at.

Q. When you went out of that meeting, so far as any agreement with all the people in the meeting was concerned, you could cut your price the next day or that afternoon, could you not?

A. Yes, I could.

Q. And the reason why you felt that before doing that you should notify the other gentlemen that you were going to do it, was simply a matter of common decency, because you had made a statement in the meeting as to what you proposed to do?

A. Yes, that was particularly true, because as chairman of the bar committee, I would undoubtedly have felt that I should notify them if I cut the price.

Q. That is, you felt it was a matter of common decency that you should do it, although you were under no agreement that you should do it?

A. That is true.

Q. In the complaint of the Government in this case there is the following statement, which I will read to you. This statement follows under allegations concerning combinations between competitors. The allegation is as follows:

"It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amounts to an agreement or combination in restraint of trade."

Now, did you at those meetings held subsequent to the Gary dinners, do anything over or beyond what is there stated?

A. We did not; at least, at the meetings that I attended. I did not attend them all, however. It is only fair to say that.

Q. You understood, did you not, to use the language of the complaint, that a declaration of purpose on your part made to these other gentlemen present that you intended to charge a certain price for your product was an entirely lawful thing for you to do, did you not?

A. Our lawyers so advised us.

Q Neither you nor any man in any meeting that you attended, so far as you know—and I ask you to testify only to what you know—so far as you know, no man went any further than what I have just read to you from this bill of complaint?

A. You are speaking about the subcommittees?

Q. Yes.

A. That is correct.

Q. From 1907 on?

A. So far as I know, that procedure was followed.

Q. We will now leave the meetings that you attended subsequent to the Gary dinner in 1907, and go back to the period from 1904 to 1907, during which period you have expressed

some doubt as to whether you have kept strictly within the advice given you.

A. Yes.

Q. Let me ask you this: When was the first meeting held, if you remember, of either manufacturers of structural or plates, after the dissolution of the pools or associations?

A. I could not possibly tell you that. I might say, further, that all papers in regard to those meetings that I had were destroyed when we moved from our old office into our new office, so I have no absolute record of dates, and I could not answer your question.

Q. You do not know when it was, then? You say that the pools and associations were broken up in the fall of 1904?

A. Yes.

Q. Would you say that you had any meetings with these other gentlemen during that year, or was the first meeting in 1905, according to your best recollection?

A. Probably early in 1905.

Q. Can you tell who were present at that meeting?

A. Only in a general way the same people.

Q. In a general way, the same people?

A. Yes.

Q. What did you do at that meeting?

A. Well, we had been advised that our former procedure was illegal, and we started off, I think, with the idea that we would not want to do anything illegal, and would keep within the strict letter of the law, and our procedure was as you have read there out of that case; that was the procedure we started out with, but I think as time went on—in other words, if one of those lawyers had been at those meetings I have no doubt he would have found out that we said some things that were not in accordance with that.

Q. Well, what was it you said that was not in accordance?

A. Well, probably somebody said, "Now, we will agree to that."

Q. That is speculation. I asked for your recollection. I do not ask you as to something that might probably have been done. Can you remember the name of any person at

any one of those meetings between 1905 and 1907 who stated that he would agree with the others upon a price?

A. No, I cannot remember.

Q. You never did it yourself, did you?

A. I do not think so.

Q. Did you not, as a matter of fact, when you went into those meetings, first take up the demand for your products, or was not that taken up in the meeting?

A. That is usually the basis of the discussion, the amount of the demand.

Q. And where the orders were coming from, the part of the country, and where the demand was found; is that so?

A. Of course, we never went into particulars as to the customers.

Q. The talk was general?

A. General, altogether.

Q. And then the question, I suppose, came up as to whether the demand was exceeding what you could manufacture?

A. Yes.

Q. I understood you to say that during 1906 and 1907, up to the panic, the pressure was all the other way; that is, there was a tremendous demand, and the actual result, to use your expression, the expression you used a while ago, that if you lost your heads and exacted bonuses for quick delivery, prices would have gone out of sight and stopped business; that was the idea?

A. That is true.

Q. You got together and talked about conditions?

A. Yes.

Q. And each one advised with the others as to what, in his opinion, was the wise thing to do?

A. Yes.

Q. That is true, is it not?

A. Yes, sir.

Q. And is not that all you did, in substance? There were a lot of details, but was it not in effect simply that you gave your opinion as to what was the wise and good thing to do, and somebody representing the Carnegie Company did the

same thing, and others representing other companies did the same thing, and you did not always agree as to what would be the wise thing, but you discussed it together?

A. Yes.

Q. Is not that true?

A. Yes; but before we left there probably was a consensus of opinion as to what the market price was.

Q. Up to your meeting, had not you been selling at substantially the same price?

A. Yes, up to that meeting.

Q. As a matter of fact, the current prices for steel products are pretty well known?

A. Yes.

Q. They are published right along?

A. Yes.

Q. Taking the subsidiary companies of the Steel Corporation, they publish market prices right along?

A. They do, by circular; yes.

Q. That is what I mean; they are published by circular. Now, there are trade papers in existence in this city and Cleveland and New York, and various places, are there not, that have men right on the ground all the time, keeping in touch with the market?

A. Yes.

Q. And they publish every day and every week the fluctuations of the market.

A. Yes.

Q. And state in dollars and cents what the market price is?

A. Yes.

Q. So that there is naturally more or less, in fact more than less, of uniformity in the prices of standard products—not specialties, but standard products?

A. That is true.

Q. So, when you gentlemen came together to discuss prices, you did not come together to discuss a lot of specialties, but you were talking about the general demand for these large items of production, like bars and plates and

staple products which were quoted every day in the trade papers?

A. Yes; of course, the different meetings considered more especially the particular products that they manufactured.

Q. I understand that, but those meetings, those committees that met—

A. (Interposing) After 1907?

Q. No, after 1904.

A. Oh.

Q. Perhaps the word "committees" is not a good word, but the gentlemen representing the manufacturers who met at times discussed the steel trade?

A. Yes, sir.

Q. The matters that were under discussion were the structural products and steel plates and bars, and all that sort of thing, staple articles that were quoted regularly in the trade journals?

A. Yes.

Q. And there was, perhaps not well defined, but in effect, a market price for those things, was there not?

A. Yes, sir.

Q. Depending upon the law of supply and demand?

A. Largely.

Q. I mean after the pools were done away with.

A. Yes.

Q. Is it not a fact that during the time that you were trying, as you stated it a while ago, to keep the prices from going too high, is it not a fact that during that time all that you did in those meetings was to get together and discuss the question, and each man for himself point out why in his opinion it was inadvisable to let prices go higher, if you felt that way, and prevent the tremendous rise which would have destroyed the whole trade?

A. As a matter of fact, the larger concerns were strictly in favor of holding prices down to a reasonable basis, and they had to argue with the smaller concerns, who would have liked to have had higher prices temporarily.

Q. The smaller concerns, you say, wanted to take advantage of the situation and get much higher prices?

A. Yes.

Q. You stated, in answer to Judge Dickinson's question with reference to the reputable and disreputable companies that were doing business, that the smaller companies were the ones that did not maintain the prices talked over?

A. I would hate to put them in the disreputable class.

Q. I am quoting his question—

MR. DICKINSON: No; I never referred to them as disreputable.

MR. SEVERANCE: No; you asked him to differentiate between the reputable and other companies.

By MR. SEVERANCE:

Q. That is what you meant, that there was a constant feeling on their part; that is, the small producers, that they wanted to take advantage of the situation?

A. That is true.

Q. Right there, has it not been your experience in the last ten years, since the Steel Corporation became so large and a number of others so large, that on a rising market the last producer to go up, as a rule, is the big producer?

A. Generally speaking, I think that is true. There may be exceptions.

Q. But as a rule, I say, that is a fact?

A. Yes, sir.

Q. Is it not a fact to-day that with the great demand that exists for steel that the large concerns like Jones & Laughlin and Carnegie are selling their products at a lower price than some of the smaller competitors?

A. Yes, that is true.

Q. I was asking you a short time ago if you could tell me what particular thing you did in these meetings, between 1905 and 1907, which was not certainly within the limitations of that paragraph in the complaint that I read, and I understand that you cannot name anything.

MR. DICKINSON: He has not said that he could not.

A. Well, Mr. Severance, we started out, I think, with the proper idea of what we could do at those meetings. All I

say is that in that interim there may have been times when people said some things which perhaps were not contemplated in that language there.

By Mr. Severance:

Q. That is, there is a possibility that that is so, but you cannot recollect such a circumstance, and cannot name a man that said anything of that kind, can you?

A. I could not just at the moment, no, but I——

Q. (Interposing) It was some individual in the meeting. That is all you mean, is it not—that some individual in the meeting might have said something and you have a sort of recollection that some individual may have said something that was not entirely in consonance with that language?

A. I might say in reply to that that a layman perhaps does not see the legal point, or would not see a legal point, as well as a lawyer who might be sitting in the room and hearing everything that was said. I do not mean that there was any general disregard of law there, but there possibly might have been things said that would not have been in accordance with the letter and spirit of the law.

Q. That is to say, you say it is possible that some person in that meeting may have made some remarks of that kind in the meeting?

A. Yes, some one, or more.

Q. But as to who did it, if anybody did it, you can not tell?

A. I cannot recollect now, no.

Q. And you cannot name anyone who said any such thing, or any date that any such thing happened?

A. No.

Q. Or any agreement that was ever arrived at in violation of those instructions?

A. No.

Q. So it is a rather hazy impression you have, more than anything else?

A. I am perfectly satisfied that after 1907, as far as I was concerned, there was no deviation from the strictly legal interpretation that you read there.

Q. And after the time, before that, concerning which you

testified in answer to Judge Dickinson, you are unable to give us any names of any person or persons who said anything or did anything or agreed to anything in violation of the instructions you received, or different from what I have read to you from the complaint?

A. No, I cannot give you a particular instance of that.

MR. SEVERANCE: I desire to go into another subject now, and as it is within three minutes of our usual time for taking recess, I will ask that an adjournment be taken at this time.

(Thereupon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

WILLIS L. KING,

the witness on the stand when the recess was taken, resumed the stand for further cross examination.

CROSS EXAMINATION (Continued).

By MR. SEVERANCE:

Q. Mr. King, how many years did you say you have been in the steel business?

A. Over 40 years; 43 years, to be exact.

Q. And all that time you have been with the Jones & Laughlin Company?

A. Yes, sir.

Q. And will you kindly state in what capacity you have been engaged?

A. I entered as a boy of 18, and was a kind of a general roustabout for a while. I went through the various departments, shipping and invoicing, and finally landed in the sales department.

Q. How many years ago did you get into the sales department?

A. I should say it was over thirty years, or about thirty years. You can understand at first I was not a very important factor. A boy never is, you know.

Q. About thirty years ago you went into the sales department?

A. I would think it was about that, yes.

Q. Who was the head of the sales department at that time?

A. Alexander Laughlin, Jr., a man who has since died.

Q. Up to what time did he continue the head of the sales department?

A. I would say up to 1874 or 1875, when he died; and then Major Laughlin took his place.

Q. How long did he continue at the head of the sales department?

A. I would say—well, up to 1890. He has only been dead a few years. 1894 or 1895.

Q. What was your position at the time Major Laughlin was head of the sales department?

A. I was secretary of the company.

Q. That was your title?

A. Yes.

Q. What were your duties, as far as sales were concerned?

A. My duties were to sell the product under his general direction.

Q. So that for quite a number of years, from the time Major Laughlin went in as the head of the sales department you were next in rank in that department, were you not?

A. Yes, sir.

Q. And that dates back to what year?

A. I think about 1895, from memory. I am not clear on that, exactly.

Q. From your knowledge of the business—the selling end of it I am speaking of; the commercial end—what would you say was the practice and custom of your concern and other steel manufacturers as to entering into pools and associations back in the 80's and 90's?

A. I have told you the pools that we entered into and practically all the manufacturers in those particular lines went into them.

Q. You spoke of certain pools that originated in the late nineties?

A. Yes, sir.

Q. There had been pools before that and associations before that, had there not?

A. That is true.

Q. Did they date back as far as you had any knowledge of the steel business?

A. Yes, I think they did.

Q. And, by tradition you know they dated back further?

A. Yes.

Q. Is it not a fact that the first time in your knowledge of the steel business that pools or associations of that character were done away with was late in the year 1904, when, as you say, Judge Gary took the initiative in doing away with the structural pool?

A. In reply to that I would say that those pools generally died a natural death in time; not always for the same reason that this particular pool did; it was stopped on account of Judge Gary.

Q. Since then there has been no pool?

A. No pool whatever.

Q. Have you ever known any time, in your knowledge of the business when, as long a period as eight years, from 1904 to 1912 existed without pools or associations of that character of some sort until the present?

A. I do not think so. I think there were always organizations of that kind, more or less.

Q. Just recurring, for a moment, to the meetings that you held after the dissolution of the association in 1904: You stated this morning, quite at length, that different gentlemen came together in those meetings and they were representatives of your company and of the Cambria, the Lackawanna, Illinois and the Carnegie Company and others. What was the fact, in those meetings, as to whether they were dominated by either the representatives of the Carnegie or the Illinois Steel Companies?

A. I could not say that they dominated the meetings.

Q. Is it not a fact that a stable market price cannot be

maintained unless each one of the large manufacturers maintains that price? That is, if one of them makes a lower price, that would bring the market down, would it not?

A. That is true.

Q. There was no time, from 1904 on, was there, when Jones & Laughlin, by putting in a lower price than the current price for any of these steel products, could not have broken the market?

A. No.

Q. The same is true as to the Cambria Steel Company, is it not?

A. I think it is true of any fair-sized concern; depending, of course, somewhat, on the character of the market. If it was unduly strong, as sometimes happens, it would not have so much effect.

Q. I am not speaking of those runaway bull markets. I am talking about the ordinary market.

A. The normal market.

Q. Yes.

A. Yes.

Q. When you gentlemen got into these meetings—I am now speaking of the time from 1904 to 1907—each gentleman stated his knowledge, did he not, of the situation of the trade?

A. Yes.

Q. If anybody suggested that they thought the price of steel products should be lower, or if anybody suggested that the price should be raised, that the market conditions would justify it, that subject was discussed, was it not, and each man stated his individual views?

A. Yes.

Q. And each one argued with the others to enforce his views on them, and to get them to become satisfied that his ideas were correct?

A. That is true.

Q. And there was no vote taken, or anything like that?

A. No; I do not recollect of any vote.

Q. The existence of the United States Steel Corporation, which had two subsidiary companies at these meetings, did not result in the United States Steel Corporation domi-

nating those meetings as against you, the Cambria, and all these other big companies, did it?

A. I think those meetings would have continued if those companies had been separate organizations.

Q. There would not have been any difference, so far as that is concerned?

A. I think not. They had before.

Q. And they were carried on, the representative of each company making his own arguments, just the same?

A. Yes.

Q. Is it not a fact that in those meetings the representatives of the Steel Corporation subsidiaries did not go to the front and enforce their views, but did not you and the other gentlemen representing the other independent companies take a more prominent part in the meetings than they did?

A. I could not say that, but the representatives of those two large companies named did not in any way try to force their views on the balance.

Q. At those meetings there were no threats made; there was no appeal to anything but the reason of the gentlemen present, was there?

A. No; there were no threats.

Q. There was a fair discussion of what you thought was best for your business?

A. Yes, sir.

Q. You were not there as the guardian of any other business but Jones & Laughlin?

A. I represented them first.

Q. One thing I neglected to ask you before is: The Jones & Laughlin Company is absolutely independent of the Steel Corporation, is it not?

A. Entirely.

Q. That is what you might call a family company, is it not?

A. Yes, sir.

Q. And always has been?

A. And always has been.

Q. You spoke, in answer to Judge Dickinson this morning of tie plates. They are not always made of steel, are they?

A. Sometimes they are made of iron, in Chicago, I think.

Q. Is it not customary to make them of malleable iron?

A. Those were more of a chair than a tie plate. They were the first evolution of supporting the rail on a tie.

Q. Are you not aware of the fact that, within the last three or four years, they have been used to a large extent in the west?

A. Malleable ties?

Q. Yes.

A. I did not know it. It is altogether possible.

Q. You stated that at these meetings, held in 1906 and 1907, an effort was made to keep down prices?

A. Yes, sir; that is true.

Q. That was done simply by these arguments, this reasoning with each other as to the ultimate effect being bad of letting the market run away, was it not?

A. Yes.

Q. That was it. Each gentleman who held the view that the public should not be charged higher prices for the product tried to enforce that view upon the others?

A. That is true.

Q. And some of them did not agree to it, and some of them charged higher prices?

A. I do not know that it was altogether philanthropic. We thought it would have a better effect and the result would be better in the end if we did not let prices go up.

Q. You felt that if there was a tremendous rise it would check the demand for your products?

A. Yes, sir.

Q. But, as a matter of fact, you simply presented that, you who thought that way, presented that at these meetings of the manufacturers as a good reason why you should not raise prices?

A. That did not prevent some of the smaller concerns from asking premiums, though.

Q. And they did it?

A. They did it.

Q. So there was no agreement that they would not charge higher prices, but you were trying to keep them from doing it; that was your attitude?

A. That was our attitude, yes.

Q. And so far as you individually were concerned, you did not put up prices?

A. We did not ask premiums.

Q. And some of the others did not, but some did?

A. That is true.

Q. That was about the net result of these conferences held in 1906 and 1907?

A. In 1906 and 1907, yes.

Q. Take these committees that were appointed subsequent to the first Gary dinner, so-called. You spoke of being the chairman of one of the committees.

A. Yes.

Q. And Mr. Schwab, I think you said, was chairman of one?

A. Yes.

Q. He was president of the Bethlehem Company, was he not?

A. At that time; yes, sir.

Q. And who were chairmen of the other committees? Mr. Topping, I think you said, was chairman of one committee?

A. Yes, I think he was chairman of the committee on billets and sheet bars.

Q. He was president of the Republic Iron & Steel Company, was he not?

A. Yes.

Q. As a matter of fact, do you recall that the representatives of any of the Steel Corporation's subsidiaries were chairmen of any of those committees, or were they so-called independent manufacturers?

A. My recollection is that Mr. Corey was the chairman of one committee.

Q. What committee?

A. The committee on ore and pig metal, possibly. Have you got that list? (Addressing counsel for the United States.)

Q. Outside of that, as a rule, the chairmen of those committees were independents?

A. I believe that is true.

Q. And the meetings of these sub-committees were called by their respective chairmen when they deemed it proper?

A. Yes, sir. Have you not that printed list there? Let me refresh my recollection.

MR. COLTON: It is for them to determine whether you should see it.

THE WITNESS: That is printed in a public journal. That publication is really what I depend on largely as to what I am testifying. I cannot remember everything.

MR. LINDABURY: Our friends have shown it to you before, have they not?

THE WITNESS: Oh, I have a copy. Well, as far as I know, the list in this printed publication is correct. Mr. Penton of the Iron Trade Review, who wrote this article, was at the dinner.

By MR. SEVERANCE:

Q. Suppose you read the list of the chairmen.

A. Ore and pig metal, chairman W. E. Corey; billets and sheet bars, chairman John A. Topping, Republic Iron & Steel Company; committee on rails and billets, chairman E. C. Felton, Pennsylvania Steel Company; structural material, C. M. Schwab, Bethlehem Steel Company; plates, chairman Powell Stackhouse, Cambria Steel Company; steel bars, chairman Willis L. King.

Q. That is the gentleman who is on the witness stand?

A. Yes.

Q. Of Jones & Laughlin?

A. Yes. Committee on pipes and tubular goods, W. B. Schiller, National Tube.

Q. That is a subsidiary of the Steel Corporation?

A. Yes. Sheets and tin plate, chairman I. M. Scott, La Belle Iron Works. As I recollect, Mr. Campbell, whom you examined the other day, took Mr. Scott's place for some reason. Here is another corporation subsidiary company: Wire products, chairman W. P. Palmer, American Steel & Wire. That is all.

Q. That is the list, is it?

A. Yes, that is the list.

Q. You testified in answer to Judge Dickinson this morning as to the steel product which had the largest tonnage, that that product was bars. Is that correct?

A. Yes, bars.

Q. Who was chairman of that committee?

A. I was.

Q. You were asked this morning with reference to the so-called Gary dinner at the time of the panic, and there were some subsequent dinners that were denominated Gary dinners, were there not?

A. Yes.

Q. Is it not a fact that neither at first nor at any other Gary dinner was any agreement made between the persons present or any of them, as to prices?

A. That is absolutely true.

Q. As a matter of fact, Judge Gary in his opening remarks, and at other times, advised the gentlemen present that there could not be any such agreement, express or implied, did he not?

A. That is true.

Q. And that he himself would not, under any circumstances, enter into any agreement of that character?

A. He did.

Q. That was his invariable attitude, was it not?

A. Yes.

Q. What was the annual production of Jones & Laughlin in 1901, the year the Steel Corporation was organized?

A. About 500,000 tons.

Q. What is the present annual production of Jones & Laughlin?

A. About three times that—about one million and a half.

Q. What is your total capacity?

A. We are running to our capacity now.

Q. Have you not a capacity in excess of a million and a half?

A. Yes, slightly in excess. If everything is running well, I think we would have a capacity of 1,800,000 tons a year.

Q. And you have increased that much since 1901—from 500,000 to 1,800,000?

A. Yes. Well, that is an ideal capacity.

Q. Well, say from 500,000 to a million and a half.

A. I think that is fair.

Q. During that time have you not been in competition with the Steel Corporation, either the whole time or the latter part of the time, as to practically everything except steel rails, heavy steel rails?

A. Do you mean to ask whether we sell in competition

Q. Sell in competition with them, yes.

A. Yes, that is true.

Q. The only steel product in which you do not come in direct competition with the Steel Corporation is heavy rails, is it not?

A. And pipes—tubular goods.

Q. Outside of that you are meeting their competition every day?

A. It is only fair to say that it is only within two years that we have made tin plate and wire products.

Q. But for the balance of the time you have met their competition in other lines, outside of the ones you have named?

A. We have sold in competition with them, yes.

Q. During that same period, have you known something of the development of the Bethlehem Steel Company?

A. Yes, sir.

Q. What has been its history in general; has it grown or not?

A. It has grown materially.

Q. Do you happen to know how much, Mr. King?

A. It would only be a guess. Considerably, though. As a matter of fact, the original Bethlehem Company made nothing but rails. Mr. Schwab has gone into a great number of products besides rails; for instance, armor plate.

Q. They make practically everything down there now, do they not?

A. Yes—structural.

Q. Armor plate?

A. Yes. I hardly think you could put bars as a large part of their product. They do not make many bars. They make

rails and armor plate, and a very high class of steel bars, such as are used by automobiles and other fine machinery.

Q. They have met the competition of your company and the subsidiary companies of the Steel Corporation?

A. Yes.

Q. All the time, and are doing so to-day?

A. Yes.

Q. What do you say as to the Pennsylvania Steel Company, as to its comparative size now and in 1901, taking the Sparrow's Point plant and the other together?

A. Generally speaking, I would say that every one of the large companies has increased its capacity for production in that time.

Q. Do you know about the Inland Steel Company?

A. Yes.

Q. Where are they located?

A. Near Chicago.

Q. Has that increased very much in size?

A. Very materially.

Q. A good many steel plants of one sort and another have come into existence in the last few years, have they not?

A. Yes. The Youngstown Sheet & Tube I think is one of the larger recent concerns.

Q. During the eleven years since the Steel Corporation has been in existence, what do you say as to whether the competition that you met with on the part of the Carnegie Company and the Illinois Steel, or any of the subsidiary companies of the Steel Corporation, has been fair, open and above-board?

A. That is, you mean the competition of the Corporation, as against the Carnegie and Illinois—

Q. No, as against you. I say, what do you say as to whether the competition of the subsidiary companies of the Steel Corporation as against Jones & Laughlin has been fair, open and above-board competition?

A. I think that is true, yes.

Q. How is that?

A. I think that is true.

Q. So far as you know, their practices in competition with

all of the outside companies have been fair, open and aboveboard?

A. To my knowledge they have, though I suppose you would find somebody that would say differently, perhaps.

Q. That is, so far as you know?

A. Yes.

Q. Your supposition is merely a guess that somebody might be disgruntled, or something of that sort; you do not have any personal knowledge of any such thing?

A. Oh, I have heard it—

Q. You have heard people complain?

A. In a way that perhaps was not justified, that before the formation of the Steel Trust there were independent concerns that had no steel plants, who bought the semi-finished material and rolled it; and I have heard people say that it was not as easy to get it, at times, from the Corporation as formerly; but I also would say that at the time of these complaints it was a period of great demand, and my diagnosis of that was that the Corporation needed that material for their own purposes, their own finishing mills.

Q. And that, to the best of your belief is the explanation of any such complaint?

A. As far as my knowledge goes that would be a fair explanation, although I do not pretend to know the particular cases or the conditions.

Q. You sell steel in the market, do you not, to other manufacturers?

A. Raw steel? That is, semi-finished?

Q. Yes.

A. Practically none, for some years. Our finishing capacity has gotten up to our full steel capacity.

Q. But, for a number of years after the Steel Corporation was organized you did?

A. Oh, yes; to a limited extent.

Q. Mr. King, it has been suggested by one or two witnesses here, on their examination by counsel for the Government, that Jones & Laughlin and other independents could be put out of business by the Steel Corporation if it saw fit to attempt to do that. Do you coincide with that opinion?

A. I never felt that there was a great deal of danger of that.

Q. You do not agree with that, do you?

A. No; I do not.

MR. SEVERANCE: That is all.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. King, you were asked about the testimony as to the power of the Steel Corporation to put its competitors out of business. I understood you to answer that you did not regard that there was much danger from that. I will ask you whether, in expressing that view as to the danger, you were expressing your opinion as to the power of the Steel Corporation to do that, or whether or not that power could, in the present state of public opinion, be exercised effectively that way?

A. I do not think it would be good policy for them to attempt it, if that is what you mean.

Q. That is not exactly what I mean. I wanted to know what you had in your mind when you said you had not felt any danger of it.

A. I should have limited that to some extent. When I said I did not think there was particular danger of the corporation forcing other manufacturers out of the business, I referred particularly to a few of the larger and stronger companies. They could, undoubtedly, cripple and perhaps stop, if they were so inclined, companies who have not a particularly large capital or a source of supply in ore and pig metal; but I think it would only be temporary. My experience is that a company never dies in the steel business. As soon as one set of men fail, there is always another set ready to take it up; so that it would be a continuous performance, if the corporation tried it.

Q. But it would be death to those fellows who went out of business, would it not?

A. Yes; that is true.

Q. If you should hear Mr. Gary, with his knowledge of

the corporation and its potentialities, and its transportation and its business connections, state that the corporation could put its competitors out of business, would you give much or little weight to such an opinion expressed by him.

MR. LINDABURY: I object to that, as intended to suggest the answer, and to lead counsel's own witness. I suppose it is the opinion of this witness and not Judge Gary that is wanted. I suppose that the witness has an opinion of his own, and does not borrow his opinion from anybody else.

MR. DICKINSON: That is not the question.

MR. LINDABURY: I object further because it does not appear that Judge Gary has ever said that.

MR. DICKINSON: I will say that I expect to prove that he has.

MR. LINDABURY: A long time ago, before Congressional investigations.

MR. DICKINSON: When he was under oath.

MR. LINDABURY: A great many things have happened since then. We have learned a good deal; all of us.

THE WITNESS: I think that.

By MR. DICKINSON:

Q. Answer the question, please.

(By request the stenographer repeated the question referred to, as follows:)

"Q. If you should hear Mr. Gary, with his knowledge of the Corporation and its potentialities, its transportation and business connections, state that the Corporation could put its competitors out of business, would you give much or little weight to such an opinion expressed by him?"

A. I will say that if Judge Gary said that deliberately, he believed he could when he said it.

Q. Now please go further and state, from your knowledge of Judge Gary and his knowledge of the affairs and powers of the corporation, if you heard him make a statement of that kind, would you give it little or much weight.

MR. LINDABURY: I object. I object to that as altogether improper.

MR. SEVERANCE: I suggest that it is in the nature of cross examination of counsel's own witness.

By MR. DICKINSON:

Q. Mr. King, do you know any man who has a larger acquaintance with the iron and steel business of this country, and a more comprehensive knowledge of it and the powers of those engaged in it than Judge Gary? Do you know of any other one man that knows more than Judge Gary in regard to those matters?

MR. SEVERANCE: I make the same objection, that the question is in the nature of cross examination of counsel's own witness, and incompetent and immaterial.

MR. DICKINSON: It is examination; not cross examination.

MR. LINDABURY: It is an attempt to get this witness' opinion by telling him what the opinion of somebody else in the steel business is, or is supposed to be, or may be or may have been some time or other.

MR. DICKINSON: No; it is an attempt to get this witness' opinion of the weight that he would give to a statement made by Judge Gary of that character.

MR. SEVERANCE: And what does that prove, supposing you got it?

MR. REED: It seems to me that you should at least state when it was supposed to have been made.

THE WITNESS: I would say that I would give a great deal of credence and consideration to any statement Judge Gary made.

MR. LINDABURY: And then probably you would form your own opinion in the end?

MR. DICKINSON: Naturally. Most men of independent mind do; just as we shall do, respectively, about the importance of the question under discussion.

By MR. DICKINSON:

Q. Mr. King, you were asked about the competition by the subsidiaries of the corporation. Do you claim to have an intimate knowledge of all the details of competition, so as to enable you to speak generally, of your own knowledge, as to whether it has been fair?

A. Only as it affected our company. I would not like to make that statement as to various other companies.

Q. Then you confine what you have said on that to your knowledge of the competition with your company?

A. Yes.

Q. You were asked about whether or not through this period of the increase of your company, your company had been a competitor of the Corporation. I will ask you whether that competition has been in prices, or whether or not substantially, through that period, your company and the Corporation have sold at the same prices.

A. Generally speaking I think the market price was fairly uniform, varying with the cost and the demand.

Q. Did or not your company and the subsidiaries of the United States Steel Corporation during that period sell at substantially the same prices?

A. Yes, sir; that is true. There is always a market price, and if you have got a market price, you have to meet it, if you want business, Judge.

Q. You said that there was no agreement as to prices reached at these meetings subsequent to 1904. Now, I will ask you whether or not the understanding reached at those meetings, such as you have described in your direct examination effected substantially the same results, so far as observing prices is concerned, as the former agreements that you made under the old association.

MR. SEVERANCE: That is objected to as asking for a conclusion, and as speculative.

Let me see if I understand the question. You mean that the meetings held subsequently to 1904 effected the same result as the pools or associations that ran up to that time, with penalties and all that?

MR. DICKINSON: So far as observing prices is concerned.

(By request the stenographer repeated the pending question, as follows:)

"Q. I will ask you whether or not the understanding reached at those meetings such as you have described in your direct examination effected substantially the same result, so

far as observing prices is concerned, as the former agreements that you made under the old association."

THE WITNESS: I do not think, Judge, we had a fair comparison in those two periods as to the actual operation of those first pools or meetings; because, during the most of the meetings subsequent to 1904, the effort, as I have told you, was to keep prices down; but the effect of those meetings was to establish, in some way, a market price that was fairly uniform.

By MR. DICKINSON:

Q. And observed by all those who were participating?

A. No, sir; it was not observed.

Q. I did not mean that it was observed, but to be observed.

MR. LINDABURY: Observed by all those who did observe it?

MR. DICKINSON: No; to be observed by those who participated in the meeting.

THE WITNESS: There was no reason why a man should observe that price unless he wanted to.

By MR. DICKINSON:

Q. Was there a moral obligation, as you understood it, to observe it?

A. I would feel so myself, personally, but—

Q. You do not—

MR. SEVERANCE: I insist that the witness be permitted to finish his answer.

MR. DICKINSON: I had no intention of preventing him from finishing his answer.

MR. SEVERANCE: He had started his answer, and you were not satisfied when he commenced with "but."

MR. DICKINSON: I did not intend to stop him.

MR. LINDABURY: The witness said he felt under a moral obligation, "but," and was about to proceed.

THE WITNESS: But it did not appear that all the others did.

By MR. DICKINSON:

Q. You mean it did not appear by their subsequent action?

A. I mean that the prices were not maintained.

Q. They were not maintained?

A. There was a constant dropping in prices.

Q. They were not maintained by all of them?

A. Not by all of them.

Q. What I am trying to get at is: What was the understanding that you reached—

MR. LINDABURY: I object. The witness has said there was no understanding, more than a dozen times. He has again and again, on cross examination and direct examination, said that there was no understanding.

By MR. DICKINSON:

Q. I will ask you whether or not at those meetings there was an understanding reached by this concurrent announcement of prices, and each relied upon the other that that price would be observed.

MR. LINDABURY: That is objected to as leading. He could not know what was in the minds of the others, and could not know what the others relied upon. He knows what was said, and that is all he could know. You have no right to ask him—

MR. DICKINSON: Oh, yes, I have the right.

MR. LINDABURY: You cannot ask him what was in the mind of another, unexpressed.

MR. SEVERANCE: Particularly as he says the others did not maintain the prices talked about at the meetings.

MR. LINDABURY: He said he did not agree to anything.

THE WITNESS: If I may say so, Judge, the object of those meetings was to steady the market price, either up or down. We thought we were doing it in a legitimate way. It was to get a stable and reasonable price.

By MR. DICKINSON:

Q. Did you expect, so far as you were concerned, to do your part in getting a stable price by announcing a price concurrently with the others, and did you expect the others to rely upon your maintaining it?

A. I think they did rely on me.

Q. They did? Did you rely on them, or most of them?

A. Yes; on most of them.

Q. You spoke of these meetings having in contemplation the observing of prevailing prices. What did you mean by "prevailing prices"?

A. I do not remember that word exactly. I must have meant observing a fair and reasonable price as a market price.

Q. When you had one meeting at that time were there or not prices which were market prices?

A. Yes.

Q. How had those prices, which were existing at the time that you came together, been reached?

A. By discussion of the conditions of the market, the supply and demand.

Q. I am not speaking, Mr. King, of the discussion at that meeting, but when you came together at any particular meeting were there or not then prices prevailing, up to that time, of some kind?

A. They were discussed.

Q. I am just asking whether there were such prices.

A. I do not believe I understand you, Judge. There is always a market price which you can find out, and—

Q. What I am asking you—

MR. SEVERANCE: One moment. Will you permit Mr. King to finish his answer?

By MR. DICKINSON:

Q. Have you finished?

A. I would like to know just what you want, Judge.

MR. SEVERANCE: You said, Mr. King, something about there always being a market price, and when you got in the middle of that statement you were interrupted. What were you going to say?

THE WITNESS: I was going to say that the market price, of course, influenced the people who went to the meetings. If that price could be maintained, there was no use reducing the price.

By Mr. Dickinson:

Q. Was that price which was in existence when they went to the meetings generally a common price?

A. It was, a common price. It was reached largely by the question of whether or not there was enough demand to keep the mills employed. In that event the price was fairly stable. If there was not enough the price was apt to wabble from time to time.

Q. State whether or not the price that was in existence at the beginning of any particular meeting was one that had come over from a former meeting.

A. The chances are it did.

Q. You were asked whether or not the United States Steel Corporation or its subsidiaries had made any threats or any efforts to dominate these meetings with threats.

A. Yes, sir.

Q. Had that been the history of meetings where people came together for a common purpose—to dominate them by threats?

A. I think not.

Q. It was rather a policy of co-operation, was it not, than one of threats?

A. Of co-operation, yes.

Q. You stated, as I understood you, that pools were done away with for the first time in 1904, when Judge Gary took the initiative in doing away with them.

A. Yes, sir.

Q. I will ask you whether or not, just previous to that time, there was talk and discussions and rumors of an investigation and action upon the part of the Government.

Mr. Lindabury: What?

Mr. Severance: 1904?

Mr. Dickinson: Yes.

Mr. Lindabury: I object to a question in regard to rumors and talks and vague references to matters of that kind, which cannot be traced. If there were any publications of that kind, they should be produced, and to make the evidence of any account, it should be shown to have come to the knowledge of persons concerned.

MR. SEVERANCE: May I ask you if you propose to show by this witness that Judge Gary heard anything of the kind?

MR. DICKINSON: No, I do not.

MR. SEVERANCE: Then you know the question is not proper.

MR. DICKINSON: Judge Gary is not the only man concerned in this suit.

MR. SEVERANCE: But he is the only man that you are now asking about. You have called the witness's attention to his testimony that Judge Gary was the man who did away with the pools, and so forth, and now you follow that up by speaking of Government investigations and rumors and then, following that, you say that you do not expect to show that Judge Gary knew of them.

MR. DICKINSON: I think it is perfectly competent, and if it is not competent, of course it will go out under exception.

MR. SEVERANCE: You know there are certain limits, and I appeal to you—

MR. DICKINSON: I think I am within the limit.

THE WITNESS: I would answer, if I must, in reply to that, that as time went on, from perhaps 1904, there was more discussion.

MR. LINDABURY: The question was limited to the period prior—

MR. DICKINSON: Prior to the dissolution.

MR. LINDABURY: Prior to the time when these pools were given up, which you say was the latter part of 1904. The question is whether before that time—

THE WITNESS: When was Roosevelt elected?

MR. LINDABURY: In the fall of 1904, and these were given up just following his election. Whether on account of it or not is apparently what Mr. Dickinson wants to find out.

THE WITNESS: Well, it is a fact, I think, that by Roosevelt and in Congress and in the press there was more discussion about iniquity in high places and about combinations, than there had been previously. I think that is all I can say. Do you want to know whether the public conscience was being awakened?

By MR. DICKINSON:

Q. No, I do not want to know about the public conscience

at all. I just want to know this, whether you, having been one of those who were engaged in these meetings, this Plate and this Structural Association, here described, anterior to their dissolution at the instance of Judge Gary, understood that the question of their legality was being mooted and talked of generally.

A. Well, there was more discussion of that in the newspapers. If that would be evidence, I do not know.

MR. LINDABURY: Do you mean to answer as of the time of 1904? Fix your mind as to that time.

MR. SEVERANCE: He is asking you about 1904.

THE WITNESS: As I understand it, Roosevelt was elected in November, 1904. Is that correct?

MR. SEVERANCE: Yes, by a large majority.

THE WITNESS: It is my belief that—

By MR. DICKINSON:

Q. Do not state your belief.

A. It is my recollection that the discussion of that question came a little later than that—well, after Roosevelt had been elected.

Q. When was he elected?

A. In the fall of 1904.

Q. But how about before you dissolved these associations?

MR. LINDABURY: They were dissolved then, Judge. The effective resolution was taken the 1st of November, 1904. They were in the process of winding up for a month or two, but the resolution to dissolve was then passed.

By MR. DICKINSON:

Q. I will ask you this question: Was the first suggestion that came to you that these associations were unlawful from Judge Gary, or had you had it before brought to your mind?

A. It came from Judge Gary.

Q. Did you attend the so-called Gary dinner of January 11, 1911?

A. Yes, I apparently did.

Q. Have you a copy of those proceedings?

A. I have it right before me.

Q. Where did you get that, Mr. King?

A. Some time ago, I do not know just when or from whom, I did not get it recently.

Q. Did you or not get, after those dinners from time to time, published copies of the proceedings?

A. Yes, I think I did.

Q. Is that (indicating) one of those you got in that way?

A. This is one of them, yes.

Q. Were there any published concerning the dinner of February, 1909?

A. It is my recollection that the proceedings at all those Gary dinners were taken down in shorthand and published in some shape, some such shape as this (indicating).

Q. Have you got one?

A. Yes.

Q. Have you one of February 18, 1909?

A. Oh, no. That was the luncheon that you spoke of this morning. No, I never saw any publication of that.

Q. Any back of that?

A. Oh, yes; back of that, I think they were all published.

Q. Have you copies of the others?

A. Not of all. I could only find, I think, two of them.

Q. What other besides that one?

A. The other one, I believe, was in May, 1911. Was there a meeting then?

Q. Can you let me have that?

A. I will let you have whatever I have.

Q. Have you anything back of that?

A. I have one besides this one, and I do not remember the date.

Q. Did you read that?

A. Yes, I read this. Do you mean whether I read it entirely through, or simply my own particular remarks?

Q. Entirely through.

A. I have not read it recently.

Q. Did you read it, though, shortly after it was sent to you?

A. Oh, yes.

Q. State whether or not, so far as you recollect, that reports the things that happened, in the way they occurred.

A. Yes.

Q. That is the best of your recollection, that it does?

A. Yes.

MR. DICKINSON: We would like to offer this in evidence.

MR. LINDABURY: This is in regard to the one dinner?

MR. DICKINSON: Yes.

MR. LINDABURY: Objected to as irrelevant and not competent proof of what was said and done at the meeting. I also object because the remarks quoted purport to be merely after-dinner remarks on a sociable occasion, and not discussions in a business meeting.

(The pamphlet was marked Government Exhibit, King, No. 140, October 7, 1912.)

RECROSS EXAMINATION.

By MR. SEVERANCE:

Q. You stated, in answer to counsel for the Government, that in your opinion it would be impossible for the Steel Corporation to put any of the large companies out of business, but that they might put some small company out of business if they went after it.

A. Yes.

Q. It is a fact, is it not, that if Jones & Laughlin started in to try to put some small company out of business, that by under-selling them they could probably do it?

A. If they were inclined to, perhaps they could.

Q. And any large corporation could do the same thing, but that is a very improbable thing?

A. It would be with us.

Q. That is what you meant by what you said, is it not?

A. That is all I meant.

Q. To go back to these meetings that Judge Dickinson

questioned you about, when the men at those meetings stated a price at which they proposed to sell their product, there never was any agreement to maintain that for any specific time, in any of those meetings, was there?

A. No specific agreement at all, but I would have to say that the effect was largely the same—the after effect.

Q. That is, you think they did sell for the price they said they were going to sell?

A. As a rule they did.

Q. That is, that they would sell at a certain price, but there was no time fixed?

A. There was no time fixed.

Q. They merely declared their purpose to sell at a certain price; that is the fact, is it not?

A. That is the fact.

Q. Judge Dickinson asked you a question that you assented to; he asked you if the prices you discussed as the market prices were not at times prices that had come over from some other meeting.

A. Yes.

Q. The price that you discussed, anyhow, was the prevailing price in the market, no matter where it originated?

A. If there had not been any change, yes.

Q. And that would be the same price, naturally, if everybody was selling at the same price?

A. Yes.

Q. Between these various meetings, however, as you have already said, prices were not maintained at a uniform figure by all the steel manufacturers?

A. Not always.

Q. In the case of a small manufacturer, if he is perfectly satisfied that the large manufacturers are going to sell at a particular price, he feels safe; and for business reasons, to make more profit, he would naturally sell at that higher figure rather than a lower figure?

A. That would be a question of whether the demand would allow him to do that.

Q. But if, as a matter of fact, his mill was running at only

one-half its capacity, and he wanted to fill it up, he would sell at a price that would enable him to do that?

A. He would have to do that.

Q. He would have to cut under the other price?

A. Yes.

Q. Those considerations are always effective, except in boom times?

A. Yes, they are effective.

Q. One man may be able to book orders enough to keep his mill filled up, and another man cannot, and a man who wants to keep his organization up and his men employed, will take a price under the current market, as it is published in the trade papers, is not that true?

A. If there is not enough business to fill all the mills to normal production of 100 per cent, of course to get more than the going rate of production, which we will say is 70 per cent, the mill would have to cut the price to get more.

Q. Unless they had superior salesmen?

A. Well, that does not count so much.

Q. You all have pretty good sales departments?

A. Yes; the price is what counts.

Q. But where the prices are equal, there is great activity and competition between the different companies in endeavoring to make quicker deliveries, and that sort of thing, is there not?

A. Delivery very often is the essence of a contract; of course a mill very often can get an order if they will agree to deliver sooner than another mill.

Q. That form of contract is put in force nearly every day, is it not?

A. Yes.

Q. I suppose each mill tries to get business by assuring prompt delivery?

A. Yes.

Q. What has been the effect of the organization of the Steel Corporation on the foreign trade of this country?

A. The foreign trade of this country in iron and steel products has largely increased since the Corporation was organized.

Q. And has it not increased largely through the efforts of the Steel Corporation?

A. Yes, sir.

Q. Do you happen to have in your head the percentage of increase?

A. I would think fifteen or twenty per cent.

Q. I mean in the eleven years since the organization of the Steel Corporation in 1901.

A. Oh, I misunderstood the question. I do not mean that there was only fifteen or twenty per cent increase in that time. The increase would be very much greater than that, but I would like to be excused from making a guess.

Q. You do not know?

A. No, I do not know.

By Mr. Dickinson:

Q. Who was the chairman of the general committee appointed at the first Gary dinner?

A. I would say Judge Gary. I think his name is first on the list there.

Mr. Dickinson: That is all.

Mr. Lindabury: That is all.

WILLIAM H. DONNER

a witness produced by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Colton:

Q. When did you first go into business?

A. Into the steel business?

Q. Yes.

A. In 1894.

Q. In what capacity did you go into the steel business?

A. I went into the tin plate business in Indiana.

Q. With what company did you go into business?

A. The National Tin Plate Company.

Q. How long were you with the National Tin Plate Company?

A. Until the property was sold to the American Tin Plate Company in December, 1898, I think.

Q. What works did the National Tin Plate Company have?

A. The National Tin Plate Company of Indiana had the works at Anderson, Indiana, and the National Tin Plate Company of Pennsylvania had the works at Monessen, Pennsylvania.

Q. What was your duty in respect to the National Tin Plate Company?

A. I organized the National Tin Plate Company of Indiana and was treasurer and manager of the company.

Q. Were you familiar with the sales of the company?

A. Yes.

Q. And with the purchases of the company?

A. Yes, sir.

Q. From whom did you purchase tin plate bars for the various works of the National Tin Plate Company during the period you were with it?

A. The works in Indiana secured its tin plate bars from Chicago.

Q. From what company?

A. The Illinois Steel Company, although once or twice I think we bought small quantities from Youngstown, if I remember correctly.

Q. From what company in Youngstown?

A. The Ohio Steel Company, I believe.

Q. And from whom did you purchase your tin plate bars for your works at Anderson?

A. That was Anderson.

Q. I mean Monessen.

A. From the Carnegie Steel Company.

Q. That is Monessen, Pennsylvania?

A. Yes.

Q. Did you purchase your entire supply of tin plate bars from the Carnegie Company at that time?

A. Yes, sir.

Q. When did you dispose of the National Tin Plate Company, if ever?

A. Both companies were sold in December, 1898 to the American Tin Plate Company.

Q. What different individuals did you meet in connection with the sale of the National Tin Plate Company?

A. Judge Moore organized the company, but he had associated with him practically all of the manufacturers.

Q. Name some of the more important men that you met in connection with the sale of your company—to what company was it sold?

A. To the American Tin Plate Company.

Q. In connection with the sale to the American Tin Plate Company, mention some of the men more prominent that you met in connection with that sale.

A. There was Mr. Reid, Mr. Leeds, Mr. Wheeler, Judge Moore and his brother.

MR. SEVERANCE: Is not the formation of that enterprise thoroughly established by Mr. Moore and Mr. Reid?

By Mr. COLTON:

Do you know how much preferred stock the American Tin Plate Company issued?

MR. SEVERANCE: I object, as it has already been proven by the records.

MR. REED: It is admitted in the answer.

By Mr. COLTON:

Q. I will ask you whether you know or not.

A. $18,000,000.

Q. Do you know whether cash options were taken on the different plants taken into the American Tin Plate Company?

A. Yes, sir; the options were taken on a cash basis, but the sellers had the privilege of taking common and preferred stock, the par value of each, for the price.

MR. LINDABURY: There is no dispute about it?

MR. COLTON: The only question is about the $18,000,000, whether that represented the cash option price.

By Mr. COLTON:

Q. State whether or not the $18,000,000 represented the cash option price of the plants.

MR. LINDABURY: How could he know that?

MR. COLTON: Well, I will develop that.

MR. LINDABURY: Does he know it? I think it is true, but I do not think he knows it.

THE WITNESS: I think that gave them operating capital, but that was the amount of the preferred stock.

By Mr. COLTON:

Q. Do you mean that $18,000,000 was more than the cash option value of the plants?

A. I think $18,000,000 gave them working capital, as well as sufficient money to pay for the property.

Q. Yes. How was the stock issued by the American Tin Plate Company distributed?

MR. LINDABURY: Your witness Judge Moore can tell you all about that.

MR. COLTON: I do not know when we will get him.

By Mr. COLTON:

Q. You say how was the stock divided? Take the common stock and the preferred stock; what was done with it?

A. The seller received either the cash or the amount that he was to receive in cash in preferred and common stock.

MR. LINDABURY: According to his individual bargain?

THE WITNESS: Yes sir.

By Mr. COLTON:

Q. How many million dollars in stock could they have used up, together with the working capital? You said that the working capital was included in the $18,000,000?

A. I do not recollect the amount of working capital that the Tin Plate Company had in its inception.

Q. Do you know how much common stock was issued?

A. I think it was $28,000,000 in common stock.

Q. What became of that common stock?

MR. LINDABURY: He has told where a large part of it went.

THE WITNESS: The promoters of the Tin Plate Company had an underwriting agreement by which you could either take cash or stock. Just how the other ten millions was distributed I know nothing about.

By Mr. COLTON:

Q. Did you see the underwriting agreement?

A. No sir.

Q. Did you subscribe to the underwriting agreement?

A. No sir.

Q. Where did you get your privilege to take either cash or stock?

A. In the option that we gave to the Tin Plate Company, as I recall, we had the privilege of deciding whether we would take cash or stock for the price at which we sold.

MR. LINDABURY: I think that is a mistake. I thought they all got their stock through the underwriting agreement, and not through the sales agreement.

By Mr. COLTON:

Q. After you had disposed of the National Tin Plate Company and its works to the American Tin Plate Company, what did you then do, in a business way?

A. The next works that I built was the Union Steel Company works at Donora.

Q. In what year did you begin the building of those works?

A. I organized the company in the summer of 1899; just when we broke ground and did active work I am not able to state. That matter was held up on account of our site.

Q. Where did you secure a site for your works?

A. At what is now known as Donora.

Q. Who was in that company with you?

A. The Mellons,—Mr. A. W. Mellon and Mr. R. B. Mellon, and later on Mr. H. C. Frick acquired an interest in it.

Q. How were your interests distributed among those four different interests?

A. I had one quarter; the Mellons had three quarters, and Mr. Frick had one third of their interest, giving him a quarter.

Q. What did you build during the years 1900, 1901, and 1902, in the way of heating furnaces, and, in general in the way of plants for making wire products, if anything?

A. We built a continuous mill for breaking down the billets preparatory to finishing on a Garrett rod mill; and this mill had two rod mills, a right hand and a left hand; and the necessary heating furnaces went with it.

Q. About how many wire nail machines, if any?

A. I do not recall the number of wire nail machines, or the number of wire drawing blocks.

Q. What was its capacity in the production of tons of rods?

A. About 180,000 tons a year.

Q. And about what was its capacity in wire?

A. I should think about 75 per cent of its rod capacity.

Q. And about what was its capacity in nails a year, in kegs?

A. I think about 1,200,000 kegs.

Q. At the organization of the Union Steel Company, and following its organization, from whom did you purchase billets?

A. We made a contract for our steel supply with the Carnegie Steel Company.

MR. LINDABURY: To run how long, if you do not mind mentioning?

THE WITNESS: I think the contract was made for five years, with the privilege, however, of either party canceling on a year's notice after a certain period.

MR. LINDABURY: And the year?

By MR. COLTON:

Q. Yes. As nearly as you can remember, what year was it entered into?

A. I think that was in 1900, sometime.

Q. Prior to the organization of the United States Steel Corporation?

A. Oh, yes; some time prior to that.

Mr. Reed: Can you fix it by reference to the dispute between Mr. Frick and Mr. Carnegie?

The Witness: It was about the time of that dispute, because Mr. Carnegie was very anxious that Mr. Mellon make a contract with him. I remember receiving a cable from Mr. Mellon when he was on the other side.

By Mr. Colton:

Q. Did you, after the organization of the United States Steel Corporation, take any steps looking to the getting of raw material?

A. Yes sir; after the organization of the United States Steel Corporation we felt that it would probably be necessary for us to build a steel works; and we secured both ore and coke.

Q. Why did you think it would be necessary for you to get raw material?

A. We would be buying our raw material, steel, of our competitors, and I thought it was only good business to make ourselves independent.

Q. What did you do in the way of additional works at Donora, if anything?

A. We started the erection of two blast furnaces, twelve open-hearth furnaces and a mixing furnace, and a blooming mill.

Q. Did you lay out the ground in any special way in respect to the erection of blast furnaces, and if so, how?

A. We laid out our furnaces so that we could utilize all of the ground that we had.

Q. How many furnaces could you have had on that ground as laid out?

A. The site would accommodate four blast furnaces.

Q. Did you do any work in respect to any of the furnaces except those the erection of which you started?

A. No sir; no more than we had them in mind, and laid our plans so that, if we ever extended, we would not be at a dis-

advantage in building the two furnaces. In fact our plans were laid out with that object.

MR. LINDABURY: That is irrelevant. It is just like the case of a man building his house in such a way that he could add to it.

MR. COLTON: Of course if that is all there is of it that is true.

By MR. COLTON:

Q. State whether or not you made any sewer arrangement adaptable to other furnaces.

A. Our sewers and our general track lay-out and pumping plant were arranged with a view to further expansion, just as any steel works that had an engineer would plan it.

Q. What was the estimated capacity of each of the blast furnaces that were being constructed?

MR. LINDABURY: That is, the two?

By MR. COLTON:

Q. The two, yes; not the four, but just the two.

A. Five to six hundred tons a day. That would be the maximum.

Q. And about what would be the annual capacity of such furnaces?

A. About 360,000 tons a year.

MR. REED: Of each?

THE WITNESS: Of the two furnaces, I should say.

By MR. COLTON:

Q. And about what would be the capacity of the twelve 50-gross ton basic open-hearth furnaces that were being constructed?

MR. LINDABURY: Twelve times fifty, I suppose.

MR. COLTON: No; I do not think that is true.

By MR. COLTON:

Q. What would be the annual capacity?

A. About 45,000 tons per month, or 500,000 tons per year.

Q. And about how much would that give you in finished products?

A. That would be ingot capacity.

Q. In billets, blooms and slabs, how much would that be?

A. About 90 per cent of that amount.

Q. Were your finished wire products sufficient to utilize all of this steel?

A. No sir; but we built two blast furnaces, because two furnaces make an economical unit; and more open-hearth capacity than we needed, because we could manufacture to better advantage in having a plant of that size.

MR. LINDABURY: You can sell billets just as you can sell sugar, can you not?

By MR. COLTON:

Q. You can sell billets, of course, if you want to?

A. Yes; billets can be sold, as a rule, to very good advantage.

MR. LINDABURY: They are staple?

THE WITNESS: Yes.

By MR. COLTON:

Q. Or you can use your billets with additional works if you want to?

A. Yes; you could make other finishing mills to consume your entire product.

Q. Where were you selling your wire products at that time?

A. All over the country.

Q. What were your wire products at that time?

A. Rods, plain wire, galvanized wire, barbed wires, nails and staples.

Q. Who were your principal competitors prior to the merger of the Union Steel Company and the Sharon?

A. The American Steel & Wire Company; the Ashland Steel Company; the Kelly Wire Nail Company; the Kokomo Steel & Wire Company; the Page Woven Wire Fence Company; the Pittsburgh Steel Company; Dillon & Griswold, of Sterling, Illinois, Wickwire Brothers, of Portland, New

York, and the Alabama Steel & Wire Company of Birmingham, Alabama. I am not sure whether that was the name. It was the Schuler concern in Birmingham.

Q. How did your capacity compare with that of each of those companies that you have just named?

MR. LINDABURY: One after another? It will take a long time to go into that. Is that what you mean?

MR. COLTON: Yes; with each of them.

By MR. COLTON:

Q. Were you larger than any one of the others, taken separately?

A. Of course the American Steel & Wire Company had a great deal larger capacity than we had.

Q. But, of the others?

A. I think of the others we probably had the largest capacity.

Q. Did you mention the Sharon Company as one of the companies competing?

A. If I did not I should have mentioned them.

MR. REED: Do you mean capacity for wire products, or capacity for ingots?

MR. COLTON: Capacity for wire products.

By MR. COLTON:

Q. How did each of those companies excepting the American Steel & Wire Company of New Jersey compare in output, in actual sales, with your company?

A. There was another company that I failed to mention—the Grand Crossing Tack Company, of Chicago.

The Ashland Steel Company and the Sharon Steel Company each had very good plants, but they were not as large as the Union Steel; and the Grand Crossing Tack Company had a very good plant, but somewhat smaller.

Q. What did the Grand Crossing Tack Company make?

A. Everything in the shape of wire products that we made, and even some specialties that we did not undertake to make.

Q. Did they make tacks?

A. Yes sir.

Q. Was the Union Steel Company merged with the Sharon Steel Company?

A. Yes sir.

Q. And were the merged companies sold to the United States Steel Corporation?

A. Yes sir.

Q. Prior to the time that the merged Company was sold to the United States Steel Corporation, did any representatives of the different wire Companies visit your works at Donora? If so, at what times?

A. If I can just refer to this date (indicating book),——

Q. I just want it approximately.

A. The merger of the Sharon Steel Company and the Union Steel Company was made on the 20th day of November; very shortly after the deal with the United States Steel Corporation followed; because that agreement was signed as of December 15th.

(By request of Mr. Colton the stenographer repeated the last preceding question as follows):

"Prior to the time that the merged company was sold to the United States Steel Corporation did any representatives of the different wire companies visit your works at Donora? If so, at what times?"

THE WITNESS: You want to know the first negotiations that led up to the acquisition?

By MR. COLTON:

Q. Yes; I want just an answer to that question, as to whether any representatives from a company not your own company came there and inspected your works prior to that?

A. After the sale of the Union Steel Company to the United States Steel Corporation?

Q. No; I mean before.

MR. LINDABURY: He is asking about the merger.

MR. COLTON: No; before the sale to the corporation.

MR. LINDABURY: I thought you said before the merger.

MR. COLTON: No; before the sale to the corporation.

THE WITNESS: After our merging with the Sharon Steel Company Mr. Frick approached the Mellons and myself and stated that he was in a delicate position, being interested in both companies, and that he would like to see the Union Steel Company sold to the United States Steel Corporation, as he was in an embarrassing position, being in both companies, and could not take an active part under the circumstances.

Q. Prior to that time did any representatives of the American Steel & Wire Company visit the works at Donora?

A. Not after.

Q. I did not ask whether they did after; but before?

A. Before the merger of the Sharon they may have been there several times. I am not clear on that, because our relations were friendly and we would have extended them any courtesy in that respect. But our works were visited by a number of representatives of the Steel Corporation after we took up the question of selling the property to the Steel Corporation.

Q. Before that: State to the best of your recollection as to whether any representatives of the American Steel & Wire Company of New Jersey visited your works.

MR. LINDABURY: You mean shortly before that, of course?

MR. COLTON: Yes; sometime within six months before.

THE WITNESS: I think some months before that Mr. Baackes had been in Donora and had gone through the mill. After the merger, however, there were several that visited it. I am not positive who they were.

By MR. COLTON:

Q. Name as many of those as you can that visited the works prior to the time that the contract was closed with the United States Steel Corporation.

MR. LINDABURY: Is that important? Of course we admit that when the negotiations reached a certain point the Steel Corporation had the works carefully examined.

MR. COLTON: I just want to know who visited the works.

THE WITNESS: It is my impression that Judge E. H. Gary and a number of the Carnegie Steel Company officials

and of the Corporation officials, visited Donora in a private car. I know that Mr. Henry H. Rogers was in Pittsburgh, and also Mr. Norman B. Ream; and I think, Mr. George W. Perkins.

By Mr. Colton:

Q. Now, to go back to the time before you had gotten your raw materials for your works, what steps did you take towards the acquisition of raw materials, and where did you go in order to get them?

A. We made a contract for ore with Corrigan & McKinney, of Cleveland, Ohio, for ten years. I established an organization in Duluth——

Q. Just a moment. What was the tonnage on that contract?

(The witness produced a book.)

Mr. Lindabury: What have you there, Mr. Donner?

The Witness: I have the contract with the Steel Corporation and the agreement of merger between the Sharon and Union Companies.

350,000 tons per year beginning in 1902 and extending for ten years.

By Mr. Colton:

Q. Was that for delivery at lower lake ports?

A. Yes.

Q. At what rate?

A. At $3.25 per ton on old range ore, and $2.65 per gross ton on Stephenson ore.

Q. I did not get the date of that contract. Can you state it, approximately?

A. I would say it was in the summer of 1901. It was a very unusual contract, and represented a very much lower price than that at which I could have purchased the ore; but the consideration was that we loaned Corrigan & McKinney $1,500,000.

Q. I neglected to ask you that question: Were the parties connected with your company of considerable financial strength?

A. Yes sir; the Mellons are pretty strong people.

MR. LINDABURY: And Mr. Frick had a little, and Mr. Donner.

By MR. COLTON:

Q. What else did you do in the way of acquiring raw materials up in the Lake Superior District?

A. I established a mining company that had an organization in Duluth, with a view of buying properties and exploring those that looked desirable, with a view of developing a mine.

MR. COLTON: We will suspend at this point. Please be here in the morning so that we may continue your examination, Mr. Donner.

(Whereupon an adjournment was taken until tomorow, Tuesday, October 8, 1912, at 10:30 o'clock a. m.)

TWENTY-SEVENTH DAY.

Room 309, Federal Building,
Pittsburgh, Pennsylvania,

October 8, 1912.

The hearing was resumed at 10:30 o'clock a. m., before SPECIAL EXAMINER JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

WILLIAM H. DONNER,

resumed the stand for further

DIRECT EXAMINATION (Continued),

By MR. COLTON:

Q. You were saying that you organized a mining company in Duluth, was it, Mr. Donner?

A. Yes, sir. We, as I recall, took out a Minnesota charter and organized the Donora Mining Company, with offices in Duluth.

Q. And in what year was that organized, as nearly as you can recollect?

A. I think that was early in 1901; and yet we may not have taken out a charter very quickly, as we had nothing to start with, and did not need any.

Q. What property did you first acquire after the organization of that company?

A. We secured a number of leases on lands that were located on the range.

Q. On what range?

A. On the Mesabi range; and spent considerable money attempting to find ore. We probably spent upwards of

$100,000 before we had any showing whatever. During that period we bought the Sweeney Mine.

Q. How much ore was there in the Sweeney Mine? What was the estimated amount?

MR. LINDABURY: You mean developed?

MR. COLTON: I will bring that out.

THE WITNESS: When we bought it, it is my impression that there was over 500,000 tons actually developed, and it was quite a bright prospect. We afterwards developed it, and it contained approximately 2,000,000 tons.

By MR. COLTON:

Q. What bonus did you pay in respect to the purchase of that mine, if any?

A. We paid $100,000 cash and gave a bonus of five cents per ton to two different parties from whom we secured the property; and the original lease was made at 25 cents a ton; so that that made the royalty 35 cents.

MR. LINDABURY: Will you ask what he means by the term "bonus" in that connection? I see it is used frequently by these ore men.

By MR. COLTON:

Q. What do you mean by the term "bonus" in that connection?

A. You can very frequently secure an option on ore lands with the privilege of leasing at a stipulated price for the mere agreeing to drill the lands and explore them; but where the lands have a showing in ore, or are in close proximity to well-known mines they command a premium; and it is not an uncommon thing to give $10,000 or $25,000 or $50,000 or $100,000 for the privilege of exploring the property, together with a lease.

Q. What was the metallic content of the ore in that mine?

A. About 63 per cent, as I recall.

Q. How does that compare with the general run of ore in the Mesabi District?

A. That is very good. This mine, I might say, laid in a very good location, and we knew there could not be any enor-

mous body of ore, but we were certain of a million tons or more.

Q. What other mines did you acquire through the Donora Mining Company, if any?

A. We purchased the Penobscot Mine together with two ore vessels.

Q. Take up that mine, before going on to the next. What was the estimated tonnage of that mine?

A. Ten million tons.

Q. Was that a developed mine?

A. Yes sir; that was a developed mine; it had been in operation two or three years, as I recall.

Q. Did you get it by lease, or by paying for the fee?

A. I purchased the mine in fee, assuming the contract for the sale of ore, which had already been made.

Q. With whom was that contract for the sale of ore?

A. The National Steel Company.

Q. About how much ore was to be delivered under that contract to the National Steel Company?

A. 1,400,000 tons.

Q. About what was the then output of the mine?

A. I think they had only sold ore on that one contract; although I would not be positive. The mine should produce easily 200,000 to 300,000 tons, I would think, in the condition that they had the mine.

Q. What was the minimum production to be taken by the National Steel Company?

A. 200,000 tons.

Q. What was the royalty that the National Steel Company was to pay?

A. The National Steel Company purchased the ore delivered at Lake Erie ports. The mine was owned in fee, so that there was no royalty to be paid to anyone.

Q. What was it to be sold at at Lake Erie ports?

MR. LINDABURY: Was there not a contract in writing?

THE WITNESS: I do not believe it specified a price. You asked me that, before my examination. I have no memorandum of the price, but it was at a price that would give

no profit whatever to the Penobscot Mine, and there had been a loss.

By Mr. Colton:

Q. Is that contract in writing?

A. Yes sir.

Q. Do you know where a copy of that contract is?

A. I had one, in the original files; but that is ten years ago.

Q. Do you know whether it was turned over with the other papers to the Union Steel Company?

A. Yes, sir; it was in those papers. That price could be very easily ascertained, but it was a losing contract to the Penobscot Mine, and had been to date. That is one of the reasons I was able to buy the mine at such a low price.

Q. What did you pay for the mine?

A. I finally purchased the mine and the two ore vessels for $1,375,000.

Q. What was the portion of that that was attributable to the ore vessels?

A. $600,000.

Q. What was the metallic content of that mine?

A. It averaged about 60 per cent.; and half of the ore was Bessemer, and half non-Bessemer.

Q. Does that mean 60 per cent. after it was dried, or before it was dried?

A. That means after it was dried.

Q. You state that the estimated quantity in the mine was ten million tons?

A. Yes. And we thought that that could be increased a little.

Q. Did the mine have any advantages or disadvantages?

A. Well, it probably was the wettest mine in that vicinity.

Q. Does that mean in the Mesabi Range?

A. Yes, sir.

Q. What did it have on it?

A. You mean as regards water?

MR. LINDABURY: In it, I guess you mean.

MR. COLTON: On it or in it, I do not know which.

THE WITNESS: Well, it took about 5,000 gallons of water a minute to keep that mine dry.

MR. LINDABURY: You mean you had to pump that out?

THE WITNESS: Yes, and if we missed one minute we would have to take out 10,000 gallons the next minute.

By MR. COLTON:

Q. It was not located under a lake, was it?

A. No, but it seemed to be the natural drain for that section of the Hibbing district. It had, however, a very economical pumping plant; so it was thoroughly equipped to take care of the water.

Q. Did that offset the disadvantage of the water?

A. It meant that it took about $25,000 of coal a year.

MR. LINDABURY: To offset it——

THE WITNESS: To supply the steam to operate the pumps.

By MR. COLTON:

Q. About how much would that be per ton, estimated cost per ton, in getting the ore out attributable to taking care of your water?

A. That would be entirely dependent upon how much ore you mined. We had no idea of operating that property as it was then operated.

Q. Well, what could be done with the property?

A. It could be stripped and mined thirty or forty cents a ton, easily, cheaper than they were mining it. That is why I regarded that property as so much more valuable than its owners did.

Q. And if you stripped it, would that get rid of the water, or would you still have to pump the water?

A. No, sir; but it would be a steam shovel proposition, whereas it was an underground mine.

Q. Did you purchase any other mines in the Mesabi Range?

A. No, sir. We were finally fortunate enough to discover a mine.

Q. What mine was that?

A. That was known as the Little Mesabi.

Q. That was located near the other mine?

A. No; that was located in the other part of the range, under a lake, the major portion of it being under a lake.

Q. Had you got that under one of those exploration contracts?

A. Yes, sir.

Q. What royalty did you have to pay on that?

A. That was a very favorable lease, having a small minimum and a 25-cent royalty.

Q. What was the minimum? Well, no matter, if you do not recall.

MR. SEVERANCE: A state exploration contract?

By MR. COLTON:

Q. Was it a state exploration contract?

A. It was partly a state lease, I think, which is very favorable to the operator; and we also paid a small bonus on that.

Q. To the people that had leased from the state?

A. To the people that had secured the lease a year or two prior.

Q. And when did you secure that mine?

A. I secured that lease some time during 1901, and did a great deal of drilling without any results, until we finally put down one hole very near this little lake and struck some ore. We then had to wait until ice was over the lake, and discovered the property by drilling through the ice.

Q. Was the lake capable of being drained?

A. Yes, sir.

Q. Would it have been a very expensive proposition to drain it?

A. No, sir.

Q. Do you have any idea how much ore there was in the mine?

A. Approximately ten million tons.

Q. Do you recall how much the bonus was?

A. It was a very small amount; I think $10,000.

Q. Was the mine developed at all at the time you made that lease?

A. No, sir. Well, I think there had been a few holes, but they had been negative.

Q. What other mines did you secure in the Mesabi Range, if any?

A. That is all the properties we had that were known to contain ore.

Q. What mines did you secure in any other range?

A. There was the Volunteer mine.

Q. Before you go on to the next mine. Where was the Volunteer mine located?

A. Either on the Marquette range or an offshoot of that range known as the Cascade; I am not clear on that.

Q. How did you get that mine?

A. We leased that mine with the privilege of purchase.

Q. What was the royalty on that mine?

A. Fifty cents per ton.

Q. What state was that in?

A. In Michigan.

Q. What sort of ore did that mine contain?

A. A hard ore.

Q. Known as Old Range ore?

A. Yes, sir.

Q. Was it Bessemer or non-Bessemer?

A. I do not recall.

Q. What bonus did you pay in getting that mine?

A. I do not think we paid any bonus on that proposition.

Q. What was the metallic content of that mine as compared with other mines?

A. Those are matters that can be very easily obtained by looking up the records of what the mine has produced heretofore and seeing its content and tonnage. It is an old mine, and there are published records of the mine.

Q. In a general way, how did the quality compare with others in the same neighborhood, or with other Old Range ores, I will put it?

A. It was a very good ore, but rather refractory.

Q. What is "refractory"?

A. Well, hard to smelt.

MR. REED: What is the name of this mine you are talking about now?

THE WITNESS: The Volunteer.

MR. LINDABURY: In Michigan?

MR. REED: Which range?

MR. DICKINSON: He said in the Cascade Range.

By MR. COLTON:

Q. Did you say that was in Michigan?

A. In Michigan; yes, sir.

Q. What was the estimated tonnage of that mine?

A. That was an Old Range property, in which it was impossible to estimate the contents of the mine.

Q. Did you have any other mine besides that?

A. There were several other explorations in that vicinity. I can explain that a little further now. In the deal as made between the Sharon Steel Company and the Union Steel Company, the Volunteer mine and certain leases in the Cascade Range adjacent or near to the Volunteer mine were not considered in fixing the value of the ore properties of Union, and were excepted out of the agreement. When it came, however, to the United States Steel Corporation purchasing the Union Steel Company, after it had been merged with Sharon, they insisted on those properties being included.

Q. Who insisted?

A. The United States Steel Corporation. They also insisted that there be a reduction of $1,500,000 in the valuation that the Sharon Steel Company and ourselves had placed on the mines, when we had aimed to arrive at what we considered the cash values of the properties.

Q. Not what you paid for them, but what they were then worth?

A. Yes.

MR. LINDABURY: In the merger, you mean?

THE WITNESS: In the merger. The price that the Sharon Mine had cost them, or what our properties had cost us, bore no relation whatever to their value.

By MR. COLTON:

Q. It was very small indeed in proportion to their value?

A. For example, we had invested considerably more money than the Sharon, and yet our properties went in at the same price. Sharon, in fact, had only paid, as I recall, $150,000 bonus for a lease which afterwards developed into a very large mine, containing about 25,000,000 tons of ore.

Q. Was that for a lease or for the fee?

A. That was for the fee; yes.

But when they bought it it was an unknown quantity. It had one drill hole in very good ore.

MR. REED: 25,000,000 tons, did you say?

THE WITNESS: Yes.

By MR. COLTON:

Q. Do you know when the Sharon secured that mine?

A. No; I do not; but I think it was in——

Q. Well, it is not important.

A. I think I had better not answer that. I would not be sure.

Q. Your mines were secured, for the most part, subsequent to 1900?

A. No sir; they were secured after we decided to build blast furnaces, which was in 1901.

Q. They were secured subsequent to 1901, then?

A. Subsequent to the early part of 1901.

Q. Were you familiar with the prevailing rates of royalty prior to 1901? I mean, did you have personal knowledge of them? I am not asking if you just picked it up through trade journals, or something like that.

A. I had no knowledge of ore values, or of the Mesabi Range prior to my requiring ore, when I got as well posted, of course, as I could. There had been a great change in

the Mesabi Range since its discovery. In fact, it had been increasing in value slightly each year; but, apparently, the people who had the most ore did not appreciate its real value.

Q. What were the prevailing rates of royalty in 1901 on the Mesabi Range?

A. I think the prevailing rate had been from 25 cents upwards.

Q. Up to what?

A. Right at that time I do not recall hearing of more than 35 cents.

Q. I am speaking of 1901. You are confining your answer to that?

A. Right to the early part of 1901?

Q. No; the entire year of 1901.

A. Values changed in the year 1901.

Q. Yes.

A. There was quite a change.

Q. When did that change begin?

A. When it was learned and thoroughly understood that the ore had a great value in itself.

Q. At what date, as nearly as you can give it?

A. I knew it——

Q. When did it begin?

A. Just let me answer it more fully. I knew it as soon as I made my first inquiries as to the prices of ore.

Q. At what date was that?

A. Probably in January or February of 1901; but it was not generally known. The Carnegie Steel Company evidently realized it for a long time prior to that, because they had been buying every property that showed promise, and they were picking them up, conservatively, without causing any excitement.

Q. Do you know at what rates they were picking them up?

A. Just as cheaply as they could.

Q. Do you know how cheaply that was?

A. As low as 15 cents a ton, I think, in some instances.

Q. At what date were they picking those up?

A. I think in 1900; probably earlier than that. Mr. Oliver probably appreciated the value of the Mesabi ore earlier than anyone in the steel business.

Q. You secured your mines after this rise in the market price?

A. After it was just starting, but before it was thoroughly understood.

The Rockefeller interests owned a railroad, and I am sure they did not appreciate the value of Mesabi ore.

Q. Did you get any leases from them?

A. No sir; it had all been taken over by the Steel Corporation.

Q. You are speaking of the time after the Steel Corporation was formed, then?

A. Prior to the formation of the Steel Corporation. I am sure they did not realize the intrinsic value of Mesabi ore.

Q. Did you realize it before the Steel Corporation was formed?

MR. LINDABURY: He has just answered.

THE WITNESS: No; I did not, fully. It was a matter that anyone who was really practical in the steel business would discover very quickly, when the small quantity of ore in sight had been developed.

By MR. COLTON:

Q. Did you have any difficulty in finding plenty of people ready to lease you ore at that time, in 1901 and 1902?

A. There were any quantity of leases that could be secured, but the really desirable lands had been gathered for some time; they had been quietly gathered for some time by the Oliver Mining Company and the Hill interests.

Q. Did not the Rockefellers have a lot?

A. Yes; they had a great deal; but I do not think they were active in securing properties, as the Oliver Mining Company was.

Q. Had their activity been earlier?

A. It had; and their interest in the ore business was more to secure the freight haul on the ore.

Q. Outside of the Hill interests and the Oliver interest and the Rockefeller interests, were there any other large owners up there that had ore?

A. The Minnesota Iron Company, which was owned by the Federal Steel Company, had very large interests.

Q. Outside of those?

A. There were a number of large properties that were owned by various steel companies.

Q. Name them.

A. For example, the Mahoning Mine was owned by several steel companies.

Q. Can you name those?

A. The Mahoning Mine is owned 50 per cent by the Cambria Steel Company, the Republic Iron & Steel Company, and the Andrews & Hitchcock Company, the American Steel Hoop Company; M. A. Hanna & Company own the remaining 50 per cent. Corrigan, McKinney & Company, of Cleveland, owned a number of mining properties on the Mesabi Range and other ranges. Jones & Laughlin had ore properties.

Q. Do you know about the extent of their ore properties?

A. The extent of the ore properties of Jones & Laughlin?

Q. Yes.

A. No; I do not; but I am sure they had quite a number of very good properties.

Q. Do you know the extent of Corrigan & McKinney's ore properties?

A. They had one very large mine on the Mesabi Range with which I was familiar.

Q. Do you know how much developed ore they had up there?

A. That would be pretty hard to determine; but it was a great many million tons.

MR. LINDABURY: Were they manufacturers?

THE WITNESS: They were manufacturers of pig iron only and were large sellers of ore.

MR. LINDABURY: Did they sell a major part of what they mined?

THE WITNESS: Yes, sir.

By MR. COLTON:

Q. Do you know the extent of M. A. Hanna & Company's ore properties?

A. No, sir; I do not, but M. A. Hanna & Company and Pickands & Mather and Lackawanna Steel——

Q. (Interposing) Do you know the extent of Pickands & Mather's property?

A. No, sir.

Q. Do you know the extent of the Lackawanna Company's properties?

A. Yes, sir; I know that they have some very large properties, but just how large I could not tell. But I could figure——

Q. (Interposing) Could you tell within ten million tons of how much it was?

A. No, sir; I would not——

Q. (Interposing) Could you say whether it was twenty million tons or fifty million tons?

A. No, sir; I never had any occasion to investigate their properties, but from their location, I know they were very good.

Q. What can you say about the coke properties of the Union Steel Company?

A. We had 3,212 acres known as the Republic Coke Company that was in what is called the Klondike region, and very near a very fine property owned by the Federal Steel Company called Buffington.

Q. Was that developed?

A. No, sir; but it was thoroughly drilled.

Q. Did you have any ovens on it?

A. No, sir.

Q. What can you tell me of the Connellsville Central Railroad property?

MR. LINDABURY: Will you ask him whether it was drilled when he got it, or while he had it?

By MR. COLTON:

Q. Was it drilled when you got it, or while you had it?

A. That property had been purchased by the Mellons and others some time before the organization of the Union Steel Company, and was thought to be a very promising coke field.

Q. Do you know what they paid for it?

A. No, but it was less than I paid. I can arrive at that figure by subtraction here. I paid on a basis of $1,214,581.59.

Q. About how much an acre would that be?

A. Approximately $350 an acre.

Q. Development had taken place in the mean time on the property, had it?

A. As I recall, they did considerable drilling, and there was a chance to purchase an interest in this coke property on a basis of $1,214,581.59, and they offered me an interest on that basis, which I took, and regarded as a great bargain. While the Republic property itself had been partially drilled, the development of other properties around the Republic gave us further information.

Q. About what date was that that you got that further information?

A. I think the Mellons had that information in 1900.

Q. What was the Connellsville Central Railroad Company?

A. In order to reach the Republic coke property and other properties, it was necessary to build a railroad that had been extended as far as Buffington, as I recall; a very much shorter haul and more favorable as to grades, would be down a certain creek near Brownsville. We were considering this problem and purchased the charter from other people who also had that idea in view.

Q. Who were those other people? Go on with the statement and mention the other people.

A. The Hillmans and their associates.

Q. Were they independent coke people, I mean independent of the Corporation, so far as you know?

A. Yes, sir. They were doing business for themselves.

Q. Did that railroad company have a right of way all the way to Brownsville?

MR. REED: From where?

MR. COLTON: From where?

THE WITNESS: No sir; as I recall, we did not have near all the rights of way.

By MR. COLTON:

Q. Did you have the right of pre-emption for the entire way?

A. We had the charter, and were compelled to do a certain amount of work when we made the purchase from the Hillmans as they were building ovens and wanted to get out with their coke.

Q. You were compelled to do a certain amount of work which enabled them to get out with their coke?

A. Which enabled them to get out with their coke.

Q. That was enough to enable them to get out with their coke, but was not enough to enable you to get out with your coke?

A. We ran the railroad toward Buffington connecting with the other railroad, and the Steel Corporation have since continued that right down, as we intended it, and all of the coke from the Klondike region, it is my understanding, goes that route now.

Q. From what point did the charter give the right of way, or give you the right to take the right of way to Brownsville, if at all?

A. I cannot recall those matters.

Q. Approximately?

A. I think it was from where this one railroad terminated.

Q. That is, where the Buffington Railroad terminated?

A. Yes. That railroad was not owned, I think, by the Steel Corporation.

Q. Who did own it?

A. I do not know, but I would suppose either the B. & O. or the Pennsylvania.

Q. Was the right of way which the charter gave you the privilege of taking good or bad from the point of locating a railroad to take out coke in that region?

MR. LINDABURY: The route, you mean?

MR. COLTON: Yes, the route.

A. It was very good, because it was a down grade and a very much shorter haul.

By MR. COLTON:

Q. Do you know whether the railroad completed by the United States Steel Corporation follows the same route as that for which the charter gave the privilege of taking land by preemption?

A. It is my impression that the Steel Corporation turned that railroad over to either the Pennsylvania road, or to the Lake Erie, or to those roads jointly. I am not sure; I do not know whether they gave it to them or leased it to them. I am not in their confidence, and could not tell you.

Q. Are you sure that they disposed of it to them at all?

A. I understood so.

Q. What do you base that understanding on?

MR. LINDABURY: He says he has no knowledge. He was not in their confidence, but he has heard it.

MR. COLTON: I just want to find out whether or not it is hearsay.

MR. LINDABURY: All right. He has said that, I think.

MR. COLTON: If it is hearsay, I shall pass on, of course.

MR. LINDABURY: Have you any actual knowledge on the subject? That is the real question.

THE WITNESS: I have no positive knowledge; and yet I am almost certain that was done.

MR. LINDABURY: Have you got this charter? I would like to see it. Was it a special charter?

By MR. COLTON:

Q. What was done with that charter? Where is it?

A. The Steel Corporation took it over.

Q. Are you sure they got it?

A. Just what they did with it I do not know.

By MR. LINDABURY:

Q. It is not printed in that book you have there, is it?

A. No, sir.

Q. Do you know whether it was a special charter?

A. I think it was a regular railroad charter.

Q. Something that anybody can go and file?

A. Something anybody can file. We were going to file it, but we found somebody was in ahead of us.

MR. REED: It costs $50 or $60 to get one.

By MR. COLTON:

Q. There had been considerable work done in connection with that railroad, had there not?

A. Not a great deal.

Q. Had you built any portion of the track of that railroad before the sale to the Steel Corporation?

A. I am sure we were working on the grades, and I think that some of the track had been laid. I remember that Mr. Hillman was very vigorous in urging us to get his coke plant connected.

Q. What Hillman was that?

A. Mr. J. H. Hillman, Sr., who had an office in the Frick Building.

Q. What can you tell me of the Lake Erie Terminal Railroad Company?

A. The Mellons had purchased about 2,000 acres of land at Elk Creek on Lake Erie, which was a very desirable location for a town and a railroad terminal.

Q. For a railroad terminal for what district?

A. For any district that wanted to do a lake business. The natural district would be the valleys and the Pittsburgh District.

Q. What do you mean by "the valleys"?

A. Points like Youngstown, Sharon, New Castle. I think this terminal railroad was more to secure the rights for that harbor and in that property that they acquired; and I do not think any large surveys had been made yet in connection with the railroad; I think it was more of a terminal for the harbor.

Q. Had any surveys been made in connection with that railroad?

A. There had, necessarily, been some surveys made.

Q. Do you know how the ingot capacity of the Sharon Company compared with the estimated ingot capacity of the Union Steel Company?

A. They were practically the same, as I recall.

Q. Would twelve 50-gross ton open-hearth furnaces produce the same amount of ingots in different plants, or do furnaces differ?

A. There is frequently a slight difference, owing to the size of furnaces or practice; but substantially the same if the furnaces were the same size.

Q. If both furnaces were 50-gross ton furnaces they would be the same size? Twelve is the number of different furnaces, and 50 is the size of the furnaces? Is that it?

A. Yes, sir; but very frequently one furnace will be a little larger than others. There is considerable variation in those matters.

Q. Your recollection is that it was about the same, as between the Sharon and the Union?

MR. LINDABURY: He has said so.

THE WITNESS: Yes, sir; substantially the same.

By MR. COLTON:

Q. What would the annual capacity be of a blast furnace producing about 350 tons or 400 tons per day?

A. Approximately 125,000 tons per year.

MR. LINDABURY: Which one now?

By MR. COLTON:

Q. Each?

MR. LINDABURY: The 350 or the 450?

MR. SEVERANCE: The 350, you said, did you not?

THE WITNESS: That is merely a matter of multiplication, Mr. Colton.

By MR. COLTON:

Q. How many days do you use in arriving at the result? That is what I am interested in.

A. Furnaces have to run continuously.

Q. But it is always a little less than the daily capacity, is it not?

A. That depends entirely upon practice. Some operators will get more out of the same furnace than others. A 350 ton furnace, with good luck, should produce 350 tons every day.

MR LINDABURY: For 365 days?

THE WITNESS: For 365 days, yes. But eventually that furnace will have to be relined, which means a shut-down; and there are certain accidents that are likely to occur, and very frequently some furnace men are able to crowd a furnace, so that they will get more than the rated capacity for a period.

MR. LINDABURY: And some furnaces crowd the operator a little, and do not get as much as their rated capacity? That is speculation. There cannot be any rule about the deficiency, can there?

MR. COLTON: No; there is some approximation of it, however.

By MR. COLTON:

Q. What were the negotiations leading to the merger of the

Union Company with the Sharon Company, and what part did you take in them?

A. Early in 1902, or possibly late in 1901, the Sharon Steel Company and ourselves discussed the question of merging the two companies.

Q. Who? You?

A. Yes sir.

Q. Were you one of the ones that discussed that?

A. Yes sir.

Q. Continue with a description of the negotiations that led up to the merger of the Union Company with the Sharon Company.

MR. LINDABURY: Do you mean a description or a narration, Mr. Colton?

MR. COLTON: A narration.

THE WITNESS: The Sharon people and ourselves both thought it would be a very advantageous deal if our companies were consolidated; that we could operate the plants unitedly more economically than we could separately; and there would be some advantages in freights if the two properties were consolidated. We could throw our western business to Sharon, which took a little lower rate of freight west than Donora, and we could throw the eastern business to Donora, which took a lower rate of freight east; and we could classify orders to a little better advantage, possibly, and operate with greater efficiency.

By MR. COLTON:

Q. Was that the substance of the discussion on the first occasion?

A. Yes, sir; but we could not agree on valuations.

Q. Who were the parties to that first discussion that took place?

A. Mr. George Darr, President of the Sharon Steel Company; Mr. John Stephenson, the Vice President and Manager; Senator Flinn, the Mellons and myself.

Q. How is Donora located with reference to Pittsburgh?

A. It is situated 38 miles up the Monongahela River.

Q. In what direction is that?

A. That is south.

Q. In what direction from here is Sharon?

A. Sharon is north of here.

Q. What distance?

A. I do not remember the distance, but it is approximately 60 miles.

Q. At that first discussion along in 1901, did that discussion come to anything?

A. No, sir; that discussion was abandoned, as we could not agree on valuations, and we had different views as to just what should be finished, as I recall, in Donora and Sharon. They were largely committed to certain improvements, and we were likewise.

Q. When did you next have a discussion with the Sharon people on the subject of merging the two companies?

A. I think some time in October.

Q. Of what year?

A. 1902.

Q. What was the subject of that discussion?

A. We both agreed that it would be desirable, from a business standpoint, to merge the companies, if it could be done on a fair valuation of the two companies, and with that end in view, they looked over our mills, and we looked over theirs. We gave them all the information we had in regard to our mining properties excepting the Volunteer and the Old Range explorations that I have heretofore mentioned. In fact, we went to the Mesabi Range and saw their mine, and they saw the Penobscot and all of the drillings and maps of our properties. We finally agreed that it would be fair to merge the plants of the two companies on a basis of the actual cost of our mills and improvements. We next agreed on a valuation of the land.

MR. LINDABURY: At the mills?

THE WITNESS: At the mills. We then agreed on the valuation of the coking coal properties and the fuel coal properties and the ore properties, and that resulted, finally, in the Sharon-Union agreement which we thought was the fair cash value of the two companies.

By MR. COLTON:

Q. And that valuation was made independent of original cost, as I understand it?

MR. LINDABURY: As to what?

MR. COLTON: Original cost of the properties.

A. No, sir; it was made on the exact cost of the mills and plants, but on an appraised valuation of the ore, coal and coke; but our mills, blast furnaces and steel works and rod mills and so forth, went in at the actual cost.

By MR. COLTON:

Q. Did it allow for any profit?

A. No, sir; none whatever. Each company had earned some money, and of course we were entitled to what we had earned.

Q. I did not hear the last part of your answer.

A. Each company had earned some money, and that was figured as cash. And this was all subjected to the auditors of the Union Steel Company to audit Sharon, and for the Sharon auditors to audit Union, and for either one of us to employ public accountants to audit, if we were not satisfied.

Q. What was the date upon which the merger was consummated between the Union Steel Company and the Sharon Steel Company?

A. November 20, 1902.

Q. Did any difference appear as to the degree of publicity of your plans, following the merger of the Sharon Company with the Union Company?

MR. LINDABURY: What is that?

MR. COLTON: I asked, was there any greater publicity of his plans after the merger of the Union Steel Company and the Sharon Company than there was prior to the merger.

MR. LINDABURY: What plans do you mean? Plans for doing business?

MR. COLTON: General plans of construction and doing business.

MR. LINDABURY: Oh, you mean plans for development?

MR. COLTON: Plans for development, yes.

MR. LINDABURY: Or to carry on business?

THE WITNESS: The Union Steel Company was a very close corporation, there only being four parties interested; but after the Sharon agreement was signed, of course it meant the merging with Sharon, which had a great many stockholders, and the amalgamation became very widely known, as Pittsburgh has enterprising newspaper reporters.

By MR. COLTON:

Q. I would like to show you an article that purports to appear in the "Iron Age," and will ask you to read it and explain it as to whether it has any basis. Please read that article that is marked there (handing witness a bound volume of the "Iron Age").

MR. LINDABURY: I object to the question. If the article in the "Iron Age" needs any explanation, we ought to have the explanation by the editor or the writer, whoever he was, and not have an interpretation of it.

MR. COLTON: I will ask him to read it, and then ask him some questions concerning it.

By MR. COLTON:

Q. I will ask you to read the article aloud, so I may ask you some questions concerning it.

A. Heading "A New Rail Mill"—

MR. LINDABURY: Are you asking him to read it?

MR. COLTON: I have simply asked him to read the article in order that I may ask questions.

MR. LINDABURY: To read it aloud

MR. COLTON: Yes.

MR. LINDABURY: I object.

MR. COLTON: So it may appear in the record concerning what I am asking questions about.

MR. LINDABURY: I object to his reading any article of that kind, either as evidence of a fact, or for any other purpose, unless it is shown that it came to the attention of officers of the Steel Corporation and was the basis of some action or inaction on their part.

By MR. COLTON:

Q. Are you familiar with that publication?

A. With the "Iron Age?"

Q. Yes.

A. Yes, sir.

Q. Where is it published?

A. I believe it is published in New York. Yes, I see it is published in New York.

Q. Is it a well known trade paper or not?

A. Yes, a very well known paper, with a very large circulation.

Q. One of the standard papers?

A. Yes, sir.

MR. COLTON: I ask that the article in question be marked for identification.

MR. LINDABURY: Let us have a reference to the page or something. What page have you before you?

THE WITNESS: I have page 49 of the issue of December 11, 1902, second paragraph, right hand column.

MR. LINDABURY: How many pages are there in the volume you have?

THE WITNESS: It is about the size of Webster's unabridged dictionary.

MR. LINDABURY: Or Universal dictionary. Fine print, is it not?

THE WITNESS: Yes, sir; and each month is numbered separately.

MR. COLTON: The particular article which I ask to have marked for identification begins with the words "A new rail mill" and ends with the words "to Elk Harbor."

MR. LINDABURY: All right, "A new rail mill" "to Elk Harbor." That is hearsay.

THE WITNESS: Yes, sir.

MR. COLTON: I offer that article in evidence.

MR. LINDABURY: I object to it as irrelevant, incompetent and not evidential of anything except that somebody was publishing a newspaper, in which all the information and all the gossip, I suppose, bearing on the industry was gathered with the usual industry and inaccuracy. You might as well offer the "Post-Dispatch" or "Leader" here today as evi-

dence of the political situation, and it would probably be just as accurate, and undoubtedly published with as much fidelity as this article. Nevertheless the Court is not in the habit of receiving those statements as evidence of facts.

MR. COLTON: The best way of proving publicity is by the articles themselves, as you suggested the other day.

MR. LINDABURY: Have you had that article designated or marked?

MR. COLTON: I have offered it in evidence.

THE WITNESS: I have not admitted any of that is a fact.

MR. COLTON: No, I simply offer that article in evidence.

MR. SEVERANCE: Are we to understand that you are going to have the witness read it?

MR. COLTON: No; I do not care whether he reads it or not. I have offered it in evidence.

(The article referred to and so offered in evidence is as follows):

"A New Rail Mill. In all probability the Union Steel Company will build a large rail mill at Donora, Pa. An official statement of the matter has been issued as follows:

"'We propose to build a steel rail mill either at Donora or Sharon, which will cost $5,000,000, that will be almost as large as the Edgar Thompson Works of the Carnegie Company. We expect to expend from $25,000,000 to $30,000,000 in improvements. We have had plans prepared for an extension of the West Side Belt Line into the Connellsville coke country and down the Ohio, along the Beaver and through Sharon to Elk Harbor.'"

By MR. COLTON:

Q. Did any party, so far as you know, other than Mr. Baackes visit your Donora works from the American Steel & Wire Company, prior to the sale of the Union Company to the United States Steel Corporation?

A. I do not think Mr. Baackes visited the works with that end in view at all, but it is my impression that Mr. Palmer and Mr. Daniels, the engineer of the American Steel & Wire Company, did visit the works just prior to our agreement.

Q. Was that prior to any negotiations between the United

States Steel Corporation and you, so far as you know?

A. No, sir; it was after Mr. Frick took up the negotiations for the United States Steel Corporation to buy the Union Steel Company.

Q. Did Mr. Frick represent both the United States Steel Corporation and your company in this matter?

A. No sir.

Q. Whom did he represent?

A. Mr. Frick represented only the Union Steel Company. He was in an embarrassing position, being interested in both companies, and stated that he would not be active under the circumstances, and for that reason he was very desirous that we sell the Union Steel Company to the Steel Corporation.

Q. He had been in both companies since 1899?

A. You have your dates confused.

Q. How long had he been in both companies?

MR. SEVERANCE: He could not have been in the Steel Corporation since 1899 because it was not organized at the time.

By MR. COLTON:

Q. Since what date had he been in the two companies so far as you know?

A. He had been in the Union Steel Company some time before the organization of the United States Steel Corporation; and of course he was in the United States Steel Corporation at its organization.

Q. He was constantly in both companies up to the time of this embarrassment on his part?

A. Yes. He was not an active director in the Steel Corporation. In fact, I am satisfied the Steel Corporation would not have purchased the Union Steel Company if it had not been that they wanted the advice and assistance of Mr. Frick.

Q. Do you know up to that time that they had not had his advice and assistance?

A. I did not know just exactly how Mr. Frick felt in regard to that matter. I knew that he was not very active in the Steel Corporation.

Q. He was more active in your company up to that time?

A. No; he was not active in our company at all.

Q. Did he furnish considerable sums of money to it?

A. I had all the money that was necessary for our purposes at all times.

Q. Do you know what was the particular occasion that caused him to feel embarrassment at the time?

A. I know that he felt as if he were in a delicate position to be active in the Steel Corporation when we were a competitive concern in several different branches; and he had very much larger interests, of course, in the Steel Corporation than he had in the Union Steel Company.

Q. Oh. He had, at that time, larger interests in the Steel Corporation?

A. Oh, yes; he was a very large holder in the Steel Corporation.

Q. I will read you from a contract that is already in evidence a paragraph concerning which I wish to ask you some questions.

MR. LINDABURY: What contract is that?

MR. COLTON (Reading): "Agreement made this 15th day of December, A. D., 1902, by the United States Steel Corporation, and so forth, party of the first part, and A. W. Mellon, R. B. Mellon, and so forth, parties of the second part."

MR. LINDABURY: Is it the contract taking over the Union Steel Company?

MR. COLTON: It is the contract taking over the Union Steel Company; yes.

MR. LINDABURY: It is the contract by which the Steel Corporation acquired the Union Steel Company?

MR. COLTON: Yes. I wish to read you the tenth paragraph:

"The vendors severally agree with the Steel Company that they, respectively, will not within the United States or the Dominion of Canada, for a period of ten years from December 1, 1902, engage, directly or indirectly, in the manufacture of iron and steel or articles made therefrom now manufactured by the Steel Company, the production of furnace coke, the mining or production of iron ore, except in the territory of Arizona and the State of Florida; excepting, however,

from the terms hereof, the enterprises, if any, in which such parties may now respectively be engaged."

Have you observed that provision of the contract, so far as you are concerned?

A. I am now pretty active, being president of the Cambria Steel Company.

Q. When did your activity begin in connection with the Cambria Steel Company?

A. Comparatively recently.

Q. Up to that time had you observed that provision?

A. Yes. But that clause was inserted by the lawyers——

Q. (Interposing) That is not the question.

A. (Continuing) And I never regarded it seriously; although I did ask Mr. Farrell whether he had any objection; and he stated not any whatever; to go ahead.

Q. When was it that you had that conversation with Mr. Farrell, about whether you could go ahead or not?

MR. LINDABURY: That is not what he said.

(By request, the stenographer repeated the preceding answer of the witness as follows:)

"A. Yes; but that clause was inserted by the lawyers and I never regarded it seriously; but I did ask Mr. Farrell whether he had any objection, and he stated not any whatever; to go ahead."

By MR. COLTON:

Q. Well, whether he had any objection to your going ahead?

MR. LINDABURY: You mean the date of the first conversation, if there was more than one?

MR. COLTON: Yes. And I will add to that question: "In connection with the Cambria Steel Company."

(By request, the stenographer repeated the amended question as follows:)

"Q. When was it that you had that conversation with Mr. Farrell as to whether he had any objection to your going ahead in connection with the Cambria Steel Company?"

A. That was some time last month.

By MR. COLTON:

Q. Did you get the privilege to subscribe to stock in the American Tin Plate Company at the time of your sale of the National Tin Plate Company to the American Tin Pate Company?

A. It is my recollection that we had the privilege of either taking cash or common and preferred stock to the par value of our option price at the time that we closed. I recall that we took all stock.

Q. Is that twice as much stock as the cash value?

A. It is twice as much the par value of stock as the cash price.

MR. LINDABURY: He covered that yesterday, I think.

MR. REED: Yes; and the day before, I think.

MR. COLTON: Yes; but I have another question in connection with that I wish to ask him.

By MR. COLTON:

Q. Did you sell your privilege to take stock in place of cash at that ratio, or a part of your privilege?

A. I sold some of my privileges, yes.

Q. At what rate did you sell the privilege?

MR. LINDABURY: That is objected to as irrelevant and immaterial.

THE WITNESS: I sold the privilege at par, to several of my friends.

By MR. COLTON:

Q. At par for what——

A. (Interposing) That is, for $10,000 I gave them $10,000 of preferred and $10,000 common. Several of my friends wanted a little of the stock, and they received it at that rate.

MR. LINDABURY: By "par" you mean on your subscription rate?

THE WITNESS: Yes; on my subscription rate; at cost to me.

MR. LINDABURY: You let them in on the ground floor?

THE WITNESS: Yes.

By MR. COLTON:

Q. At the time you signed the contract disposing of the Union Steel Company to the United States Steel Corporation, did you know of any merchantable ore in the State of Florida?

MR. LINDABURY: That is objected to as irrelevant.

THE WITNESS: No. I never gave the matter any thought.

By MR. COLTON:

Q. Did you know any?

A. No, sir.

Q. Did you know of any coking coal in either of those states at that time?

MR. LINDABURY: Objected to as irrelevant.

THE WITNESS: No, sir.

By MR. COLTON:

Q. Did you know of any steel works in either of those states at that time?

MR. LINDABURY: Objected to as irrelevant.

THE WITNESS: No, sir.

MR. COLTON: That is all.

CROSS EXAMINATION,

By MR. LINDABURY:

Q. At the time the Sharon and Union properties were amalgamated, had you any purpose, plan or idea, of selling the amalgamated company out to the Steel Corporation?

A. No, sir.

Q. Had you any information or idea that the Steel Corporation was seeking to acquire those properties, or either of them?

A. No, sir.

Q. Was there anything in the business or competitive situation to suggest such an idea to you, or to anybody, so far as you know?

A. No, sir.

Q. There was, I judge from you testimony yesterday,

active competition in the products that you were making, active competition throughout the country, was there not?

A. Yes, sir.

Q. Were wire products your largest output?

A. Yes. The Union Steel Company itself was only making wire products.

Q. And had the output of wire products increased during the two or three preceding years?

A. Yes, sir. There has been a very marked increase in the production of wire products for a long period of years.

Q. Was the Sharon Company also making wire products?

A. Yes, sir.

Q. Had the number of producers of wire products grown during the three or four preceding years; were there more in the business?

A. I do not know that I understand your question.

Q. Had any new manufacturers of wire products entered the field within three or four years?

A. Yes, sir.

Q. Had there been any increase in the production of the various wire manufacturers during that time?

A. Yes, sir.

Q. And had that increase been general? I mean spread around among them, and not confined to any one or two?

A. No; they had all grown, and several were new concerns.

Q. And was competition active among them?

A. Yes, sir.

Q. Very general?

A. Yes, sir.

Q. And covering all parts of the country?

A. Yes, sir.

Q. Was there any combination or pool or anything of that sort existing?

A. No, sir.

Q. I think you said that next to the American Steel & Wire Company your product was the largest in wire goods.

A. Yes, sir; I think that would be.

Q. But you named several others that were close to you?

A. Yes. The others had slightly smaller mills.

Q. Then there were quite a number of those?

A. We started out with a single rod mill, and when we made our contract with the Carnegie Steel Company we were compelled to double that plant in order to make a satisfactory contract with them. So that we had really two rod mills, whereas the others only had one.

Q. Was there anything in the character or amount of your output, or in your method of doing business, to make your business more dangerous to the Steel Corporation than that of these other manufacturers of similar lines?

A. No, sir.

Q. Was there anything in the attitude or methods of the Steel Corporation to lead you to think that they were likely to endanger your prosperity?

A. No, sir. We were not afraid of them in that respect, as we had a mill we thought was their equal, and in making steel from the raw materials to the finished product we felt we could manufacture just as cheaply as they could.

Q. Was there anything in the situation to indicate that the taking over of the Union by the Steel Corporation and the operation of that in connection with their own plants, as against other manufacturers, would tend at all to restrain trade in any way?

MR. COLTON: I object to that as calling for a general conclusion, and also as involving a question of law.

MR. LINDABURY: I mean by restraining trade, restraining it in fact and not in law; not technically, but actually to restrain or lessen it.

MR. COLTON: The same objection.

MR. LINDABURY: I will withdraw the question and make it shorter.

By MR. LINDABURY:

Q. Was there anything in the business situation or connected with the Steel Corporation or the Union plant to indicate that the taking over of the Union plant by the Steel Corporation and the operation of that in connection with

their own would tend to stifle competition or restrain trade in steel products?

MR. COLTON: Same objection, and also on the ground that it calls for certain circumstances that are not shown to exist, and that the witness has not been shown to have a knowledge of.

By MR. LINDABURY:

Q. Please answer the question.

A. What was the question?

(The stenographer repeated the question as above recorded.)

THE WITNESS: I would say that there was not, for this reason: Mr. Frick, in taking up the negotiations, was very much afraid that he could not induce the Corporation to take over the properties, and they made a very careful examination of our ore properties and of our plants, as to what we had, before recommending it. I recall that the American Steel & Wire Company were desirous of having our rod, wire and nail mills, owing to the fact that business was increasing very rapidly, and still more so owing to the fact that they wanted to abandon the Oliver Rod, Wire and Nail Mill on the South Side. Then the Carnegie Steel Company were especially anxious to take over the open-hearth steel works because they were very short in——

MR. COLTON: I object.

MR. LINDABURY: Go on.

THE WITNESS: (Continuing). Because they were very short in open-hearth steel, Bessemer being largely superseded by open-hearth, and they were anxious that the property be taken over so that they could supply Donora with Bessemer steel and ship the open-hearth steel to Homestead, and their various works, where they were short of this product, and that was done after the plants were taken over.

By MR. LINDABURY:

Q. Was the amount of steel produced lessened in any way after the Union was taken over; was the production of

the country lessened in any way as to steel products after that, or did it continue to increase as it had before?

A. It continued to increase—

MR. COLTON: (Interposing). I object to that as irrelevant. The question should be whether the plans were carried out with the same rapidity that they were being developed at that time, and not whether there was a general increase in the country's production.

MR. LINDABURY: I will ask you a question after this is answered, in view of my brother's objection. I think you were interrupted in your answer. I will ask the stenographer to read the question and the answer as far as it was made.

(The question and answer as given, as hereinbefore recorded, were read aloud by the stenographer.)

By MR. LINDABURY:

Q. Go on.

A. Although there may have been temporary slow-ups in business, as there always are in the steel business.

Q. Has the prosperity of the independents or manufacturers outside of the Steel Corporation gone on increasing as it had before?

MR. COLTON: I object to that on the ground that the witness has not been shown to be familiar with the steel business since signing that contract, or the condition of independents.

By MR. LINDABURY:

Q. Well, I will find out. Do you know generally about the steel business since the sale of the Sharon, as to whether it has grown or shrunk away, or whether the independents have shriveled up or been crushed?

A. They have been pretty active concerns, and very prosperous.

Q. And has the general product of the country gone on increasing?

A. Yes, sir.

Q. Now, I will ask you a question to satisfy the Govern-

ment's counsel, as indicated by the criticism on my question of a moment ago, and that is whether or not, after the sale of the Union to the Steel Corporation, they went on developing the properties so acquired, or whether they gave up and abandoned all their projects for the increasing of that property.

A. I am not very familiar with Sharon, as I have not been in Sharon to go through the works since the Corporation took over the property; but I have been in Donora a number of times, and naturally have visited the works. They have gone ahead with improvements of various kinds, and more than fully maintained the property. There was a rather restricted business for a year or two, just after the United States Steel Corporation took over the property, and matters were not rushed on account of the business depression, but they completed the steel plant and operated it, sending the open-hearth steel to their various finishing mills where open-hearth was required, and sending the Bessemer steel to Donora for the rod, wire and nail mill, where it could be utilized to advantage. That, however, has ceased, and now I think for several years the American Steel & Wire Company have been operating the steel plant and blast furnaces as I originally intended.

Q. Do you happen to know how much has been spent in developing the Union plant since the Corporation bought it?

A. We agreed to contribute $6,856,441.77 to complete the Union Steel Company plant, as required. They called on us for all of that money, and it is my understanding that they have spent something like $10,000,000 in addition.

MR. COLTON: I object to the last statement on the ground that it is not shown that that understanding rests on any personal knowledge, and I move to strike out that portion of the answer.

THE WITNESS: That can very easily be ascertained by the Steel Corporation reports. That is where I got my information. I think they sold the additional bonds for improvements.

By Mr. Lindabury:

Q. You have visited the properties and know from observation whether such a sum has been spent, at least approximately?

A. I am not familiar enough with the Sharon plants to say.

Mr. Lindabury: Perhaps we might as well suspend here.

(Thereupon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

WILLIAM H. DONNER,

the witness under examination at the taking of recess, resumed the stand for further

CROSS EXAMINATION (Continued)

By Mr. Lindabury:

Q. Mr. Donner, you testified this morning, as follows: "We agreed to contribute $6,856,441.77 to complete the Union Steel Company plant, as required. They called on us for all of that money, and it is my understanding that they have spent something like $10,000,000 in addition."

Whom did you mean by "we"?

A. The sellers. That is, the sellers——

Q. (Interposing) Of the plant?

A. Of the Union Steel Company's side of it. That was——

Q. (Interposing) And with whom did you agree—the Steel Corporation?—to make that contribution?

A. That was made in our agreement with the Sharon Steel Company. Our work was in process of construction, a large part of it, and it was estimated that it would take that amount to complete it.

Q. The works?

A. It says this (Reading):

"Cash to be contributed for estimated expenditures yet to be made towards completing the plant according to present plans and working capital, which amount the parties of the first part are to pay as the same from time to time is required and called for by the board of directors. Any part not paid in by July 1st, 1903, to bear interest at five per cent per annum, deducting, however, from this amount all moneys advanced to Union since October 31, 1902."

Q. Is the amount mentioned?

A. Yes, sir. That is in the Sharon-Union agreement.

Q. And what is the amount—the one you gave this morning?

A. Yes; $6,856,441.77.

Q. Did you furnish that money?

A. Yes, sir.

Q. When?

A. After the Steel Corporation took over the properties.

Q. That is, it became the beneficiary, as purchaser of that contract?

A. Yes, sir.

Q. And you paid in that money afterward to the Steel Corporation as and when required, pursuant to the terms of the Sharon agreement?

A. Yes, sir. The plans——

Q. (Interposing) I do not care for any more than that. You furnished the money after the Steel Corporation took the property over?

A. Yes, sir.

Q. You stated Mr. Frick's position. Mr. Frick was a practical steel maker, was he not?

A. Yes, sir; he had been chairman of the board of the Carnegie Steel Company for years.

Q. Well, he had grown up in the business, had he not? I mean he had been a long time in the business?

A. Yes, sir; he had been in the business a great many years.

Q. And understood it from a practical standpoint, did he not?

A. Yes, sir.

Q. He had been very active in the actual operation of the Carnegie plants, had he not?

A. Yes, sir.

Q. He was a partner of Mr. Carnegie?

A. Yes, sir.

Q. For a good many years, when the Carnegie partners operated the Carnegie properties; that is right, is it not?

A. Yes, sir.

Q. He was one of the most active and foremost steel makers of that time, was he not?

A. Yes, sir.

Q. He had not been active, however, had he, for some years before this sale to the Steel Corporation?

MR. COLTON: Just one moment before answering that question. I object to his answering other than regards his own company, on the ground that he has not been shown to have knowledge of Mr. Frick's action, other than in regard to the Union Steel Company.

MR. LINDABURY: That is common knowledge. You know that, and all of us do. Everybody knows Mr. Frick's activity as a steel maker.

MR. COLTON: I do not refer to that question, but to your last question.

(Upon request, the stenographer repeated the last question as follows:)

"Q. He had not been active, however, had he, for some years before this sale to the Steel Corporation?

MR. LINDABURY: I mean personally active in the actual operation.

A. I think he was quite active prior to the organization of the United States Steel Corporation, and he was in a manner very closely associated with the United States Steel Corporation; and yet he was not what you might call an active director.

By Mr. Lindabury:

Q. Do you remember a disagreement between Mr. Carnegie and Mr. Frick in 1900, resulting in a litigation between them?

A. Yes, sir.

Q. That was the year, was it—1900?

A. I think that was the year; it was either 1900 or 1901—it must have been 1900.

Q. That was a well-known and very bitter affair, was it?

A. Yes, sir.

Q. You spoke of Mr. Frick's attitude with respect to selling out. What was your own personal attitude in that matter?

A. I was very anxious to sell the properties, from the fact that I was largely in debt, and it gave me a chance to clean up.

Q. Who made the advances toward a negotiation for the sale of the property; I mean which side?

A. Our side made the advances.

Q. Do you know how they were received by the Steel Corporation's officials?

A. Yes, sir.

Q. Tell us.

A. I know that Mr. H. H. Rogers and Mr. Ream were very much opposed to the buying of Union Steel.

Q. Do you remember whether or not they were members at that time of the executive committee or finance committee of the Steel Corporation, whichever committee was then in control?

A. I remember they were members of the board, but just which committee, I could not state. Judge Gary, I know, was also adverse to the buying of the property, but was very anxious to have Mr. Frick's advice and counsel in the Steel Corporation, and for that reason was willing to take over the property upon a basis of what they considered a fair valuation, which disagreed, however, from the valuation that Sharon and ourselves had placed on the property.

Q. How do you happen to know of the opposition of these directors to the purchase?

A. I talked with them. Judge Gary told me if it had not been that he wanted Mr. Frick, wanted his advice and counsel in the Steel Corporation, he would not have favored the purchase.

Q. Did you talk with Mr. Rogers and Mr. Ream?

A. Yes; but only slightly.

Q. However, enough to know that, at first, the officials of the corporation were averse to it?

A. And they questioned very much whether they could use the plants to advantage. When, however the condition of their open-hearth capacity was explained, and it was understood that our finishing mills could use Bessemer, that had quite an important bearing on their taking over the properties; because, you see, they needed the open-hearth steel——

MR. COLTON: Just a moment. I object to his stating that they needed the open-hearth steel, without its first being shown that he has some familiarity with their needs.

MR. LINDABURY: I will show that later.

By MR. LINDABURY:

Q. Finish your statement.

A. I say that had quite an important bearing on their taking over the property, because they needed the open-hearth steel, and had a surplus of Bessemer steel; Bessemer steel being gradually displaced by the open-hearth in many lines.

Q. How did you become acquainted with those facts? In other words, did you know what, if any, open-hearth facilities they had?

A. I knew they were short. Anyone in the steel business knows that there has been a shortage of open-hearth steel for some years. It is gradually displacing the Bessemer. Mr. Frick, of course, thoroughly understood that situation.

Q. Had you talked with him about that; and about the arguments that might be used with the Steel Corporation?

A. Yes, sir.

Q. What was said?

MR. COLTON: I object to that, on the ground that it is hearsay, and incompetent, irrelevant and immaterial.

MR. LINDABURY: I will put it this way:

By Mr. Lindabury:

Q. What was agreed between you and Mr. Frick, or you and any other of your associates in the Union Steel, as to the matter of presenting the question to the Steel Corporation, and as to their probable needs, and the use they could probably make advantageously of the Union's properties?

Mr. Colton: I object, on the same ground.

The Witness: Mr. Frick was very anxious that the property be sold to the United States Steel Corporation, but was not at all certain that he could accomplish the sale. He gave, however, as his reasons, the fact that they really needed the open-hearth capacity, and could use to advantage the blast furnaces that we had. He was very much more anxious to sell than the Mellons. In fact, they were rather loath to sell; and yet they were anxious to comply with Mr. Frick's wishes in the matter.

By Mr. Lindabury:

Q. You had what open-hearth facilities then?

A. We had at Donora twelve open-hearth furnaces and the mixing furnace; and they had twelve open-hearth furnaces, as I recall——I would not be positive as to that number——at Sharon.

Q. Making 24?

A. We were making a product in which Bessemer steel, at that time, could be used just as well as the open-hearth.

Q. How was the possession of those properties at Donora and Sharon of special value, at that time, to the Steel Corporation?

A. I would say that they were of great advantage to the Steel Corporation, owing to the fact that it gave them immediately a large and increased production of open-hearth steel, of which they were short; and, in fact, the whole country was short; and of course they could utilize our finishing mills and the furnaces.

Q. Were they in need of such finishing mils at that time, as you understood?

A. I understood that they could use the rod, wire and nail mills to good advantage.

Q. Do you remember when the negotiations were completed and the agreement was reached?

A. Yes, sir.

Q. Tell us.

A. It was reached on December 15th.

Q. We have a contract bearing a date there, but I am not asking you with respect to when the contract was signed. I am asking when the minds of the parties met which I presume was before that.

A. No; I think we agreed on that day. There was considerable controversy only over the value of the ore. The value of the coking properties and the coal properties was conceded, and the mills were put in at cost. The valuation, however, of $10,000,000 on the ore was gone into very carefully. In fact, the United States Steel Corporation had had me give maps and all the information I had in regard to the ore mines, and Judge Gary insisted on a reduction of $1,500,000 from the base value on which Sharon and ourselves had agreed.

Q. So you put the mining properties in at that much less than they had been put together in the merger?

A. At that much less than they had been put together in the merger between the Sharon and ourselves; yes sir.

Q. And I understood you to say that when you made that merger you put them in at what, after a good deal of consideration, you then on both sides thought was their fair value?

A. Yes, sir.

Q. What do you say now as to whether those properties were worth the amount at which they were sold to the Steel Corporation? I am speaking of the mining properties.

A. I would say they were undoubtedly worth the amount that the Steel Corporation paid, and I think they were worth really the amount that we had scheduled or more.

Q. You spoke of the coal or coking properties that you had and that you sold: What did they cost, with all improvements and expenditures up to the time of the sale?

A. Figuring the bonds as worth par in our merger, we received $2,880,000 for the Republic Coke Company, consist-

ing of 3,212 acres. That gave the Union Steel Company—I refer to myself and associates—a profit of $1,665,418.41. This coal was put in at $900 an acre, which was considered a conservative value as of that date.

Q. It had appreciated that much, had it, after your purchase?

A. Yes, sir; it had appreciated. Really, at the time, it was no doubt worth more than the basis I have given you at that time; although I was allowed to go in and take a one-fourth interest on that basis. The Klondike Coke region, however, was a new territory, and developed very rapidly. Coke at that price was selling very much lower than in the Connellsville region, and of course it sells very much higher today than that price—than the $900 an acre.

Q. What was this projected railroad, about which you were asked? About what was the length of it?

A. I would not want to state that without looking it up. It was a comparatively short line.

Q. Could you approximate it?

A. I would rather not approximate it. I could look it up and tell you.

Q. Perhaps you could tell us whether it was ten miles long or a hundred miles long, or half of that?

A. It was more than ten miles, and it was less than 100 miles; considerably less.

Q. Thirty or forty miles, perhaps?

A. This is purely a guess, now, but I would say that it was 25 to 40 miles long.

Q. The manufacturing plants, I understood you to say were put in at cost in the merger, and at cost to the Steel Corporation?

A. Yes, sir.

Q. Were there added profits put into the sale?

A We received bonds for our profits. The Union Steel Company, up to the time of the sale,—that is, our portion of the Union Steel Company,—had earned $1,167,776.01.

Q. That remained in the treasury?

A. That remained in the treasury; for which we received bonds at par.

MR. DICKINSON: Was that in addition to the purchase price?

THE WITNESS: That was a part of the purchase price.

MR. DICKINSON: I wanted to know if that was a part of the whole price?

THE WITNESS: That was a part of the $25,000,000 odd that our interest received.

By MR. LINDABURY:

Q. What examination did the Steel Corporation make of your properties, for the purpose of ascertaining the fairness of the price asked?

A. They had some of their representatives visit the mills, both at Union and Sharon. The coke and coal properties, of course, they were very familiar with, and they did not require a visit, as they had that information. They had the information, that coal being so located that it was well known. They had me go to Duluth, with the maps of our mines, and all of the drillings, and had their representatives make a very careful examination of what we had developed in our exploratory work, and figured the maps so as to arrive at the quantity of ore that we had.

Q. You spoke of representatives of the Steel Corporation visiting the Union plant or the Sharon plant. Were these visits before or after the negotiations opened for the sale to the Steel Corporation?

A. They were after the negotiations were opened, although no doubt they had had representatives—I know they had been visited in a friendly way, and they were familiar, in a way, with what we had, as well as Sharon.

Q. There was nothing unusual about that?

A. Oh, no; just like we would be familiar with what they were doing.

Q. And those were visits of a kind quite independent of any thought of sale?

MR. COLTON: I object on the ground that, unless he testifies further as to what those visits were, he is not shown to have any knowledge as to the purpose for which those visits were made.

By Mr. Lindabury:

Q. Were those visits anything out of the ordinary, or anything other than those friendly visits which are made by the representatives of one steel plant to another?

A. No, sir; and there were not as many visits as I and my engineers made to their plants.

Q. You spoke of the advantages that you thought would come from the amalgamation of the Sharon and the Union. Will you state again what you thought those were?

A. We felt that some economies could be effected by selling our products together and by shipping the orders that went west, from Sharon, whereas those that went east would go from Donora. We also felt that our orders in some lines could be classified to a little better advantage by having the two plants, so as to give us a little better operations, from the operating standpoint.

Q. Is it an advantage to have plants in different parts of the country producing some such articles as you were making, rather than to have them all together in one place?

A. Oh, there is a decided advantage in this respect: steel products are sold delivered, and the freight is generally a very important item, and it is only business to ship the products from the mill which has the lowest rate of freight, so as to make the saving in the freights in that respect.

Q. Is it of considerable advantage to a steel manufacturing concern to have plants in the neighborhood of Chicago, let us say, to supply the western territory, and in the neighborhood of Pittsburgh to supply the eastern territory?

A. Yes, sir: that is undoubtedly an advantage.

Q. How much of an advantage is that?

A. Well, in many instances it would amount to more than a dollar a ton. I ought to be familiar with that. I would like to look it up and give it to you.

Q. Do you know what the freight rate is on steel products from Pittsburgh to Chicago?

A. It is eighteen cents a hundred, and to New York it is eighteen cents a hundred, from Pittsburgh, as I recall. The rate from Chicago to New York would not be thirty-six cents.

Somebody here ought to know that. I cannot recall those rates. They are a matter that can be easily ascertained.

Q. It is a considerable item, is it not?

A. It is a very considerable item, yes.

Q. Is large scale production in the steel business economical?

A. I do not know just what you mean by that.

Q. I mean rather than manufacturing in small quantities, at small plants.

A. A mill has to be a certain size to be an economical unit; but take a mill, for instance, of 40,000 or 50,000 tons of ingots per month, that is designed properly and operated properly; it ought to compete with the Steel Corporation in any of their plants.

Q. What do you say of the advantages of integration, owning everything from the ore to the finished product?

A. For the real economical manufacture of steel, there is no doubt you have to go from the ore to the finished product. A few years ago the pig iron was produced one place, and after cooling, shipped to another; freight was paid on it, and then it was converted into steel, which made a waste not only of freight, but the extra expense of handling and rehandling the metal, and also the extra cost of reheating it. The Steel Corporation no doubt has taken advantage of all those things, as well as any of the modern works.

Q. What do you mean by "as well as any of the modern works?"

A. Well, Jones & Laughlin—

Q. Oh, you mean others have also?

A. Yes, sir.

Q. That principle of integration was a distinct advance, was it not, in the manufacture of steel—this acquisition of everything from the raw material up to the control of all the processes?

A. Yes, sir; there has been a great improvement in the practice in the last ten years; there is no doubt of that.

Q. You had done the same thing at Donora, had you not, or were preparing to do it?

A. We were preparing to convert the ore into finished products.

Q. Is a diversity of finished products desirable?

A. Yes, sir.

Q. Why?

A. Well, occasionally the market is very active in certain lines of finished steel, whereas there is not a demand in other lines, and if you have a diversified product, you can manufacture your steel into the product that the general demand requires.

Q. Requires at the time?

A. Yes, sir. And those are subject to very marked fluctuations; there are marked fluctuations in the steel business.

Q. Sometimes one article is needed and sometimes another, you mean?

A. Yes, sir.

Q. So that a concern that can make the one or the other, as the market demands, can keep going, whereas it might otherwise have to stand still at times?

A. Yes, sir.

Q. How about the foreign trade; is the manufacture of diversified products on a considerable scale, with combined selling agencies, of advantage in the foreign trade?

A. Yes, sir; very materially so. In fact, the foreign trade is frequently sold on very close margin, and if the manufacturer is not the most modern and economical, he would not be in a position to compete.

Q. Do you know whether or not the plants of the Steel Corporation are modern and scientifically designed and arranged?

A. Yes, sir.

Q. And as highly so as any that you know of?

A. Yes, sir.

Q. Are they able, because of their various locations and designs, to practice economies that small concerns can not practice? I do not mean them alone, but any large concern like that. I presume there must be savings that they can make.

A. I would say that there are some savings that they may

make, but very few that a concern like Jones & Laughlin or the Lackawanna Steel or Cambria Steel or concerns of that type could not take advantage of.

Q. I did not mean to allude to those, but to smaller ones. I suppose the larger ones can manufacture, because they can practice economies that the smaller ones cannot, cheaper than the small ones.

A. Yes; there is an advantage in having a comparatively large unit.

Q. You alluded to Cambria and Jones & Laughlin and the Lackawanna and Pennsylvania—

A. And the Republic Steel.

Q. Those are all pretty well integrated, are they not?

A. Pretty well what?

Q. Integrated. They own the ore?

A. Oh, yes. They all manufacture from the raw material to the finished product.

Q. All the way through?

A. Yes, all the way through.

Q. Is there any one of those you have just named that could not hold its own in any competition with the Steel Corporation?

MR. COLTON: I object on the ground that the witness has not been shown to be familiar with that during recent years.

MR. LINDABURY: I think he is.

A. I do not think there is any one of those companies that could not compete with the United States Steel Corporation.

By MR. LINDABURY:

Q. And compete successfully?

A. And compete successfully. The Steel Corporation is not able to build any better mills than the independents. I think the Steel Corporation has the cream of the coking coal and of the ore, but they have too shrewd a business management to give that away at less than its worth.

Q. That is, that would be wasting their future?

A. Yes, sir.

Q. These other concerns all have proportionately large supplies of both ore and coal, have they not?

A. Yes, sir.

Q. When did you become president of the Cambria Steel Company?

A. Some time last month.

Q. And also chairman of the board of directors?

A. No sir; I am not chairman of the board; there is no chairman of the board. There is a chairman of the executive committee.

Q. Who holds that position?

A. Mr. Morris.

Q. But you are the president of the company?

A. Yes.

Q. And you are also, I presume, a stockholder in the company?

A. Yes, sir.

Q. A very considerable one, are you not?

A. Yes, sir.

Q. Have you lately invested largely in the stock of that company? By "lately" I mean in connection with your assuming the presidency.

A. Yes, sir; I have purchased some stock since then.

Q. Were you a stockholder before then?

A. Yes, sir.

Q. And have been for some time?

A. Yes, sir.

Q. Is the Cambria projecting improvements?

A. Yes, sir; we have some improvements that are in contemplation.

Q. On quite a considerable scale, are they not?

A. Yes, sir.

Q. For the purpose of increasing the output of the company?

A. I expect to see the output increased considerably in the next——

Q. (Interposing). The next few years?

A. The next few years; yes, sir.

Q. Do you know how much it increased during the last ten years, approximately?

A. I know that we made 40 per cent more steel in August than any other August in its history.

Q. That is something. But could you tell us approximately how much more, for instance, you made during the last year than during a period ten years ago?

A. I can look that up and give it to you exactly.

Q. Perhaps you could tell us whether it is two or three or four times as much?

A. No; it is not that much, nor any percentage like that. It may be twice as much, but not more than that, I should think.

MR. LINDABURY: That is all.

REDIRECT EXAMINATION.

By MR. COLTON:

Q. Are you a stockholder or a bondholder in the United States Steel Corporation?

A. No, sir.

Q. Or any of its subsidiary companies?

A. I am a comparatively small bondholder in the Union Steel Company; that is, I have some of the bonds I received in the sale to the Steel Corporation.

Q. Could the Illinois Steel Company, by reason of its situation, operate any cheaper after than it could before it was absorbed by the United States Steel Corporation?

A. I would say that it did.

MR. LINDABURY: And therefore I suppose that it could.

By MR. COULTON:

Q. By reason of its situation?

(By request of the witness the stenographer repeated the preceding question as follows):

"Q. Could the Illinois Steel Company, by reason of its situation, operate any cheaper after than it could before it was absorbed by the United States Steel Corporation?"

THE WITNESS: By reason of its situation? The situation would be the same, I think. Do you mean, by the use of that word "situation," its location?

MR. COLTON: Its location, yes.

By MR. COLTON:

Q. Was it any better off in respect of rates of freight after than it was before it was absorbed by the United States Steel Corporation?

A. The rates of freight, I think, are approximately the same; but it would receive orders for its various products to points where it had an advantage over the plants of the Steel Corporation, for instance in Pittsburgh; whereas, before, Pittsburgh would no doubt take orders in the West and the Illinois Steel Company take orders in the East. There would be a crossing of their lines.

Q. Then that competition that formerly existed between the Carnegie Steel Company and the Illinois Company would have ceased in that respect?

MR. LINDABURY: I object to that. That is not an inference.

THE WITNESS: The Steel Corporation would take the orders and then give them to the mill which they could use to best advantage; and if it was a point between Pittsburgh and Chicago that took the same rate of freight from either point, for instance, they would give it to the mill that could use the order to the best advantage.

By MR. COLTON:

Q. Would there be any competition between those mills in respect to those orders?

MR. LINDABURY: I object. Of course there would not when they were both owned by the same interests.

THE WITNESS: They would be worked in perfect harmony as a unit.

By MR. COLTON:

Q. Does the Cambria Steel Company own any roads carrying ore from the Lake Superior district to the lakes, or from the lower lake ports to the Cambria Steel Company's works?

A. No, sir; and as I told you that was the only point in which I thought the Steel Corporation had any advantage over the independents.

Q. Explain that advantage and what it is.

A. The United States Steel Corporation owns ore-carrying roads, and of course they are not interested in a reduction of rates from the iron ranges to the lake; whereas it would be an advantage to the other companies if the freight were lower.

Q. Does the Cambria Steel Company own any mines in the Lake Superior District?

A. Yes, sir.

Q. Does it own any mines with traffic agreements with either of the Corporation's railroads?

A. There is a traffic agreement between the Mahoning Mining Company, as I recall, and the Hill interests, but it is not one in which the royalty was advanced as the freight rate declined.

Q. Explain how the royalty does work in that lease.

A. The royalty is 25 cents a ton, when a certain quantity of ore is shipped, and decreases as the quantity is increased to, I think, 12 or 15 cents per ton.

Q. Do you know of other leases of that character in that region with other railroads than the Hill interests?

A. I think there are some leases of that description.

Q. Are there with one or the other of the corporation's railroads?

A. I do not know.

Q. Do you know of any one of the large independent companies, such as the Lackawanna, Jones & Laughlin, or the Republic Iron & Steel Company that owns roads that carry ore from the Lake Superior district to the Lake ports, or to the lower lake ports, and from there to various steel works?

A. No, sir.

Q. How do you know that Mr. Frick came to you in regard to the sale of the Union Steel Company to the Steel Corporation before he had been approached by parties connected with the United States Steel Corporation or the American Steel & Wire Company?

A. Because Mr. Frick made that statement; and he is a man that I have the utmost confidence in.

Q. Did he say that he had not been approached?

A. He did not say that he had not been approached; but he wanted us to sell, and he approached us.

Q. What did he say?

A. He stated that he would like very much if we would consent to sell the Union Steel Company to the Steel Corporation; that he was in an embarrassing position on account of his large interests in the Steel Corporation, and that financial conditions did not look very good; that he thought it might be very close in the next year or two, and that while we would undoubtedly make money in the Union Steel Company, he thought that we could afford to sell if we could get a fair value, and that he would like very much if we would consent to the sale. The Mellons were very loath to agree to a sale on anything like the basis of the Sharon and Union agreement, and there was a great deal of argument in regard to the matter. I was personally in favor of selling, but it took a great deal of work on Mr. Frick's part to induce the Mellons to sell.

Q. Is that all that Mr. Frick said to you on the subject of previous negotiations?

A. He stated, also, that if we would agree to sell he would take the matter up immediately with the corporation; and, in pursuance of that conversation, he did take the matter up with them, and I was asked to give all the information I had in regard to our ore properties and the mills, and, in fact, everything I knew in regard to our properties.

MR. COLTON: I ask to have the question repeated by the stenographer.

(The question was read as follows:)

"Q. Is that all that Mr. Frick said to you on the subject of previous negotiations?"

MR. LINDABURY: You mean all that he said in respect to previous negotiations, or whether there had been any?

MR. COLTON: Or whether there had been any, yes.

THE WITNESS: He was paving the way to take the negotia-

tions up; but he was not in a position to take them up without first consulting the Mellons and myself; and, of course, would not have acted without our consent.

MR. COLTON: I ask to have the question read again by the stenographer.

(The question was read as follows:)

"Q. Is that all that Mr. Frick said to you on the subject of previous negotiations?"

THE WITNESS: What I was giving you were the negotiations previous to Mr. Frick taking the matter up with the Steel Corporation.

By MR. COLTON:

Q. Did Mr. Frick say anything as to whether he and the corporation had had any negotiations in respect to a prospective sale of the Union Company to the United States Steel Corporation, one way or the other?

A. I know that he had had no conversation, because he was very fearful lest he could not induce them to take over the properties.

(By request of Mr. Colton, the stenographer repeated the question.)

MR. LINDABURY: It seems to me the witness has answered it.

MR. COLTON: I ask for an answer to the question.

(The question was repeated by the stenographer as follows:)

"Q. Did Mr. Frick say anything as to whether he and the corporation had had any negotiations in respect to a prospective sale of the Union Company to the United States Steel Corporation, one way or the other?"

THE WITNESS: I am sure he had had no conversation——

MR. COLTON (Interposing): That is not the question.

MR. LINDABURY: Do not interrupt his answer.

MR. COLTON: Go ahead.

THE WITNESS: I am sure that he had had no conversation,

and it would have been a ridiculous question for me to have asked him, in view of the information that he had given me, and the questions that he had asked.

(By request of Mr. Colton the stenographer again repeated the question, as follows:)

"Q. Did Mr. Frick say anything as to whether he and the corporation had had any negotiations with respect to a prospective sale of the Union Company to the United States Steel Corporation, one way or the other?"

THE WITNESS: I do not just understand what you mean.

(The stenographer again repeated the question.)

THE WITNESS: He did not state that, in answer to your question specifically; but from the general conversation I am sure that he did not have.

By MR. COLTON:

Q. Give all you can of that general conversation from which you draw that inference, in order that we may also draw the inference in respect of the matter.

A. Mr. Frick seemed very doubtful whether he could make the sale of the Union Steel Company to the Steel Corporation, and after securing the Mellons' consent to the sale, and also my own, he wanted to know what advantages, if any, there would be in the Steel Corporation owning the Union Steel Company, and whether there could be any other than that of securing modern finishing mills and blast furnaces which they could use, and our open-hearth furnaces, which he knew they were short of, and in urgent need of. The conversation of course occurred so long ago that I cannot recall everything that was said, but I know that Mr. Frick was personally very anxious to have the Steel Corporation acquire the Union Steel Company, as he felt in a very awkward position in regard to his position in the Steel Corporation, and he was very much more anxious that the deal should be consummated than the Mellons were. In fact, if Mr. Frick and the Mellons had not been very close personal friends, I am sure the Mellons would not have consented to the sale.

Q. Is that all?

A. Yes, sir.

Q. Why did you consider the Union-Sharon merger terms as the basis for the sale?

A. Because we thought that was a fair valuation of the properties.

Q. Did you sell the properties at less than you thought they were worth?

A. No, sir. I think they were sold at a price they were well worth.

Q. Ore and all?

A. Ore and all; yes, sir. I think it was a conservative value.

Q. You answered some questions for Mr. Lindabury, I think, looking at that paper. What is that paper?

A. That is the paper that you asked me to prepare.

Q. What is it?

MR. LINDABURY: I have not seen it. May I see it?

MR. COLTON: Certainly. I do not know what it is about.

MR. LINDABURY: You asked him to prepare it.

MR. COLTON: I asked him to prepare it, yes.

By MR. COLTON:

Q. That is the appraised valuation, is it?

A No; you asked me to prepare a sheet showing the profits that we made on the sale to the Steel Corporation.

Q. Will you state the profits that you made on the sale to the Steel Corporation?

A. I am alluding now to the property that was owned by the Mellons, Mr. Frick and myself.

Our investment, including cash paid in, real estate, as per contract, cash contributed to complete improvements, and deferred payments assumed as per agreement, amounted to $18,853,534.34.

Our earnings from operations up to December 1, 1902, were $1,167,776.01.

That makes a total investment of $20,021,310.35, for which we received Union Steel Company bonds, guaranteed by the United States Steel Corporation, amounting to $25,214,288.41.

Of course the odd dollars and cents were settled in cash.

In the amount of $25,214,288.41 there was no profit on the cost of our plants, but there was a profit on the companies, as set forth in the contract as follows:

Profit on the sale of	
River Coal Company	$ 360,194.88
Republic Coke Company	1,665,418.41
Donora Mining Company	3,079,864.77
Allowance	87,500.00

That makes the total that we received $25,214,288.41.

It should be borne in mind that while we paid in cash $20,021,310.35, we received no cash, but bonds of a par value of $25,214,288.41, guaranteed by the United States Steel Corporation.

Q. What per cent of interest did those bonds bear?

A. Five per cent.

Q. And by turning in cash, do you mean turning in that land at that value as cash, or do you mean that you turned over to the Corporation that amount of real cash?

A. No; that amount of cash represented our earnings of $1,167,776.01, which was part cash and part accounts receivable and part material in process of manufacture.

MR. LINDABURY: But it remained in the Corporation?

THE WITNESS: Oh, it remained in the Corporation, and the mills had been built and represented that amount of cash.

By MR. COLTON:

Q. How near to completion were the blast furnaces?

A. I think they could have been completed within something like four months.

Q. Do you know how many months it was before they were completed?

A. There was a business depression; and, as I recall, those matters were rather held in abeyance and not rushed to completion.

Q. Do you know about how long it was?

A. I cannot tell you that, Mr. Colton.

Q. They were in urgent need of open-hearth steel——

A. (Interposing). The open-hearth steel plant was completed before the blast furnaces.

Q. Do you know how long is was before it was completed?

A. No, sir; I could not tell you; but that work was continued on.

Q. Do you know how long it would have taken you to complete the open-hearth furnaces at the time of the merger?

A. I should think about the same length of time. Possibly I may be a little short on that time.

Q. How far had you proceeded with the building of the open-hearth furnaces?

A. Oh, the building was erected and the furnaces were in process of erection.

Q. Which is the main part of a furnace, the furnace or the building?

A. The furnace is.

Q. How long does it take to build an open-hearth furnace?

A. That depends very largely on conditions, on labor conditions——

Q. I mean on the then conditions.

A. I would say that the time I gave you was a fair time for the completion of the plant.

Q. It is not a question of completion; I mean building the plant outright.

A. The building of a new plant outright?

Q. Yes; suppose you had the land at an existing plant. I mean building open-hearth furnaces at an existing plant.

MR. LINDABURY: How many?

THE WITNESS: Twelve?

By MR. COLTON:

Q. Twelve, the same number you had there—50 gross tons.

A. Well, it would take, I would say, from a year or upwards, according to your ability to secure machinery and materials. There are times when you can build more rapidly than others.

By MR. COLTON:

Q. How long had you been engaged in the building of those open-hearth furnaces before they were turned over to the United States Steel Corporation?

A. I think about a year; but conditions with us had been very bad for building promptly. I started the Union Steel Company on a farm where there were absolutely no houses, and we had to bring in all of our labor and build a town in connection with our works, and we had a rod, wire and nail mill that was of more importance than the steel works, so that our energy was devoted more toward that end of our operations. I might add that we were in no hurry for steel, as we had a contract that assured us of our supply.

Q. How long would it take a company—a strong company, that was able to acquire its raw materials and already had the ground,—to build such furnaces in connection with an existing plant?

A. With business conditions as they are today?

Q. No; with business conditions as they then were; and assuming that they had the money.

A. I think a year would be very good work.

Q. Did Mr. Frick make any objection to the merger of the Union Company with the Sharon Company?

A. No, sir.

Q. He made no objection?

A. No, sir.

Q. He was not embarrassed at the time, so far as you know?

A. As to our merger with Sharon?

Q. Yes.

A. No, sir; I rather think he felt it was a good move, and yet Mr. Frick was not active in the matter at all. That matter was up with the Mellons and myself.

Q. I do not recall what you said in regard to the question of how long it was after the Corporation purchased those open-hearth blast furnaces that it completed them.

A. I do not know. The Carnegie Steel Company operated the open-hearth plant at Donora, I know, for five or six years, shipping the open-hearth product to its various finishing mills, where it was short of open-hearth product.

Q. How long after the purchase was it before they began to operate those open-hearth furnaces?

A. I cannot tell you that.

Q. Can you approximate it?

A. No, sir, I cannot.

Q. Was it as much as a year?

A. I do not think it was anything like a year.

Q. What would you put it at?

A. The consummation of our deal with the Steel Corporation required until some time in March, and construction work during that period was held up more or less on account of the change in the ownership of the companies, on account of making the inventories, and so forth, and it is my impression that the Carnegie Steel Company finished the open-hearth plant within, say, six months after they took over the property, which was about the 1st of March, or probably about the 15th of March.

Q. And when was the sale?

A. The sale was made on December 15th; but it required the audit of the books of both companies from their inception to the time of the sale; and then there was a re-audit made by the Steel Corporation, which consumed a great deal of time. The Steel Corporation would not accept our audit of the books of Sharon; neither would they accept the audit of the books of the Union Steel Company by the Sharon Steel Company. We audited each others books, and then the Steel Corporation made a very careful investigation with their own staff.

MR. LINDABURY: In giving the date of the sale, then, you mean the contract of sale?

THE WITNESS: The contract of sale, yes.

By MR. COLTON:

Q. When did Mr. Frick first take up the matter with you?

A. I would say something like ten days or two weeks after our deal with Sharon.

Q. What date was that?

A. I could not give you any positive dates. I would say approximately ten days or two weeks after the Sharon deal.

Q. And the date of the Sharon deal was what?

A. November 20th.

Q. There were a number of wire companies that you named this morning, the capacities of which I would like to take up with you. Do you know, at all, what the tonnage in wire was of the Kelly Nail & Iron Works? I mean, prior to November 20, 1902?

A. The Kelly Nail & Iron Works manufactured nails only. They were stockholders in the Ashland Steel Company and secured their rods from the Ashland Steel Company. I do not know just what their capacity would have been in nails, but they had a very good nail works, or nail mill, as I understood.

Q. Do you know what percentage of their nail mill production was cut nails, as distinguished from wire nails?

A. I do not recall that they made cut nails. They might have done so.

Q. Do you know what the capacity of the Kokomo Steel & Wire Company was, in wire, first?

A. I would be afraid to state what that was. I never saw the Kokomo mill.

Q. Was it large or small, in wire?

A. My understanding is that it was a very nice plant, of about 150 or, possibly, 200 tons of rods a day; and that they drew wire and made nails; and they were also manufacturers of wire fencing.

Q. What annual capacity would that give, in wire rods?

A. That would be 40,000 to 60,000 tons of rods per year.

Q. Can you tell me about what the wire capacity of the Page Woven Wire Company was?

A. I think that was about the same capacity.

Q. Did it make nails?

A. Yes, sir; some few nails, but not a great many, as I recall.

Q. Can you tell me about what was the capacity of the Dilion-Griswold Wire Company in wire rods?

A. No; but it was my impression that it was quite small.

Q. And in wire?

A. I cannot state.

Q. Did it manufacture any wire?

A. I think it did.

Q. Was it small or large?

A. I think it was a small plant.

Q. And in nails?

A. I think the company had a small plant.

Q. Do you know whether that company was taken over, in whole or in part, by the American Steel & Wire Company of New Jersey, subsequently?

A. I do not.

Q. Do you know approximately the tonnage of the Alabama Steel & Wire Company of Birmingham, in rods, at that period?

A. They built a mill that should have produced 100,000 tons of rods per year; but they had mechanical difficulties, and I do not think they ever succeeded in producing anything like the tonnage for which the mill was designed.

Q. Do you know what their tonnage was in wire, at the same time?

A. I was never through their works and I do not know; but I think they built with the idea of finishing their entire product. That was my understanding from Mr. Schuler.

Q. You do not know how large their wire nail product was?

A. No, sir; I do not.

Q. Do you know whether Wickwire Brothers manufactured wire rods at that time at all?

A. They were competitors on some lines of products, but I am not certain just what they manufactured.

Q. You spoke of several new concerns having sprung up in the period from 1899 to December 15th, 1902. Would you name those new concerns that sprang up during that period, other than those that are here? I will not go into those again.

A. I do not recall any new plants, outside of the Pittsburgh Steel Company.

Q. Were any of those companies that we have gone over new plants that began in that period?

A. They were comparatively new plants, but I think they were all started prior to the organization of the Steel Corporation. I am not clear whether the Pittsburgh Steel Company was or not, but I think it was.

Q. You mean the Pittsburgh Steel & Wire Company?

A. Yes, sir.

Q. Was its capacity large or small on December 15th, 1902?

A. They had a very modern rod, wire and nail mill and also a fence plant, and were manufacturers of barbed wire.

Q. Do you know their tonnage at that time?

A. Their first mill was built for probably 400 tons of rods per day; but they have grown very rapidly; they have since started a rod mill and, later on, a tube mill——

Q. I do not care about their later development. I was just speaking of that period.

Do you know any company formed since the organization of the United States Steel Corporation in April, 1901, and before December 15th, 1902, that had under way and partly constructed as large an ingot capacity as the Union and Sharon Company combined had?

MR. LINDABURY: Do you not want to add to that: "and that was located at Sharon and Donora"? You might let some other in.

MR. COLTON: I withdraw that question.

By MR. COLTON:

Q. Do you know of any company that was formed between April, 1901, and December 15th, 1902, that had as large an investment as the Union Company had at the time it was sold to the United States Steel Corporation?

MR. LINDABURY: That is objected to as irrelevant and immaterial.

THE WITNESS: I do not recall any. You mean as large as the Union and Sharon combined?

MR. COLTON: Yes.

THE WITNESS: I do not recall any.

By MR. COLTON:

Q. Do you know of any company that was formed during that period that had under way at that time as large

constructions of plants as the Union Company had at that time?

A. I should think the Pittsburgh Steel Company have about. They have a very large open-hearth plant. The furnaces, as I recall, are a little larger and better than ours at Donora.

Q. At that time?

A. They have been built since those at Donora.

Q. I asked about that time: at the time of the transfer of the Union Company to the United States Steel Corporation.

A. You mean between the formation of the Steel Corporation and the time we sold in 1902?

Q. Yes.

A. I do not think there were any.

MR. COLTON: That is all.

RECROSS EXAMINATION.

By MR. LINDABURY:

Q. Do you know how many open-hearth furnaces were built during the years 1901 and 1902?

A. No, sir. It is pretty hard to be exact in any of those matters.

Q. Of course. You simply do not know?

A. No; that is a long while ago.

Q. You would not say there were not more built in the country at large than you built during that time, would you?

A. No; I would not.

Q. You do not know, do you?

A. I do not know.

Q. Now a word in regard to the manufacture that you were asked about by Mr. Colton. As to Illinois, could the Illinois Steel Corporation, with the plants and the facilities that it had in 1900 or 1901, before the formation of the Steel Corporation, have successfully developed a business in the eastern states in competition with Pittsburgh?

A. They were at a disadvantage as regards Pittsburgh;

and in periods of depression, when prices were low, they could hardly have competed in the eastern territory.

Q. It would have been practically a prohibitive disadvantage, would it not?

A. Yes, sir.

Q. Could the Illinois Steel Corporation at that same time have developed a successful foreign business, involving, of course, transportation from the territory of its mills to one or the other seaboards?

A. No, sir. They are not nearly as favorably located for export business, or for eastern business, as mills in what is known as the Pittsburgh district.

Q. I will ask the same question with regard to the Federal Company. It had no facilities other than the Illinois for entering into foreign or export business, had it?

MR. COLTON: I object on the ground that the witness is not shown to know anything about what was going on about that time.

MR. LINDABURY: As Judge Dickinson said, we will take his answer.

THE WITNESS: What is the question?

By MR. LINDABURY:

Q. You spoke of the Illinois Company and said that that could not successfully enter into an export business with the facilities it had in 1900, and I ask you whether that is true of the Federal Company as a whole?

A. I think that is true of the Federal as a whole, although the Federal was a little nearer seaboard, as I recall, than the Illinois Steel. I think the Federal had taken over the Lorain plant, as I recall.

Q. They only manufactured girder rails or street railway rails, that entered into foreign commerce?

A. Yes, sir; I believe that is true. They were not furnishing very much.

Q. In order, therefore, for the Federal to have entered into a successful foreign business, it was necessary that it should acquire finishing mills nearer the seaboard, was it not?

A. Yes, sir; and for the higher finished products like tin plates, sheets and articles that require considerable coal, there is no doubt but what the Pittsburgh district has advantages over all the others.

Q. So, also, was it necessary to acquire steel plants or finishing mills further east than Chicago or Lorain to develop a good business in the eastern states?

A. Yes, sir.

Q. By "good" I mean successful.

A. Yes, sir; in order to manufacture in the most economical way and be capable of handling the business in all parts of the country, that is undoubtedly the fact.

Q. And that is about the only way to succeed nowadays, is it not?

A. Yes, sir; it is tending that way very rapidly.

By Mr. COLTON:

Q. Were you familiar, in a general way, during the period from April 1st to December 15th, 1902, with what your competitors were building in the way of blast furnaces, steel works and other things—for instance, open-hearth furnaces?

A. Yes. I was getting all the pointers I could.

Q. Could any concern have started up within the United States during that period, as large as the Union-Sharon Company combined, with their plans and financial backing, without your having heard of it?

MR. LINDABURY: I object, if that is meant as cross examination. I did not ask him if any one plant had built as largely as they, but whether there were as many open-hearth furnaces throughout the country.

MR. COLTON: But you asked him if he knew anything about it, and he said no.

MR. LINDABURY: I did not ask if there was any one plant.

By MR. COLTON:

Q. Please answer the question.

(The question was repeated by the stenographer as follows:)

"Q. Could any concern have started up within the United States during that period, as large as the Union-Sharon Company combined, with their plans and financial backing, without your having heard of it?"

A. No. I think that is true. The way you asked your first question, would that refer to Colorado Fuel? That was an old company, but they made very large improvements, I just recall now. They built new plants during that period.

Q. Of new organizations; I should have limited it to that, perhaps.

MR. LINDABURY: Why?

By MR. COLTON:

Q. Well, taking both old companies and new companies, the Colorado Fuel Company is the only one you can recall?

A. Well, Lackawanna was building a pretty large plant.

Q. But both of those companies had started up prior to the formation of the United States Steel Corporation?

A. I am a little confused as to the time of the Lackawanna's building.

Q. Do you know as to the rates on goods sold from abroad to interior points in the United States, or as to rates on goods sold from interior points in the United States to abroad, as to whether there is any modification as to freights in respect to them?

A. Do you mean as of today?

Q. As of that time.

A. I think that at that time the railroads made a lower export rate than the regular rate from Pittsburgh to seaboard plus the ocean freight, and likewise there was a lower rate of freight made on tin plate delivered at Chicago than there would have been on the regular ocean rate plus the full tariff from New York to Chicago. That is my recollection.

Q. Do you have any knowledge of the Federal Steel Company, one way or the other?

A. I have been through the plants of the Illinois Steel Company, but I have no special knowledge.

Q. Do you know anything about the Lorain plant?

A. I have never been through the Lorain plant.

Q. Do you know about the Lorain plant?

A. You mean after that period?

Q. Yes.

A. I had never been through the Lorain plant at that time. The present plant is a very large plant.

By MR. LINDABURY:

Q. Would you say that no existing steel company increased its productive capacity in 1901 and 1902 to an amount equal to the capacity of the Union at the time of the merger?

A. I do not think either of the other companies increased quite to that extent.

Q. Several of them did very greatly increase their capacity during that period, did they not?

A. Yes, sir; I think they have all been prosperous.

Q. I mean now to exclude the plants of the Steel Corporation. Jones & Laughlin increased theirs greatly, did they not, during that time?

A. Yes, sir.

Q. And the Lackawanna?

A. Yes, sir.

Q. And the Colorado Fuel & Iron?

A. Yes, sir.

Q. And the Inland Steel?

A. Yes sir; and the Youngstown Sheet & Tube have grown.

Q. I am speaking now of 1901 and 1902, those two years, you know; that was the time when the Union was built, was it not?

A. Yes, sir.

MR. LINDABURY: I think that is all, Mr. Donner.

MR. COLTON: Nothing further.

A. R. KENNEDY,

called as a witness by and on behalf of the United States, having been first duly sworn, testified as follows:

By Mr. Corneau:

Q. What is your business?

A. Traffic manager of the Pittsburg Steel Company.

Q. How long have you held that position?

A. Close on to five years.

Q. What was your position before that time?

A. Assistant in the same department.

Q. And before then, what?

A. I worked for the Pennsylvania Railroad for five and one-half years, and for the Lake Shore Railroad for a year and a half.

Q. In what departments?

A. The freight department.

Q. Will you tell us, in a general way, what your duties are as traffic manager of the Pittsburgh Steel Company?

A. In a general way, looking after all matters of transportation, both water and rail, the handling of all freight rates, and looking into all competitive conditions from the freight rate standpoint, and keeping our sales department posted.

Q. That necessarily involves, then, your keeping yourself familiar with rates on the commodities in which your company is interested?

A. Yes, sir.

Q. Before you were traffic manager, and while you were assistant traffic manager, what were your duties; were they of the same general nature?

A. Yes, sir.

Q. While you were connected with the railoads, what, if anything, did you have to do with rate matters

A. I was rate clerk for a year and a half, with the Lake Shore Railroad, and I was in the general freight department handling tariff claims for three and one-half years.

Q. By the way, when you were connected with the Pennsylvania Railroad and the Lake Shore Railroad, was it in this part of the country?

A. Right in Pittsburgh.

Q. And you dealt then, I take it, with rates in this vicinity?

A. Yes, sir. In and out of this vicinity.

Q. Have you recently made a special investigation concerning the rates on ore generally from lower lake ports to furnace points and elsewhere?

A. Yes, sir.

Q. You have examined the tariffs of the different railroads to ascertain those rates?

A. Yes, sir.

Q. Have you those tariffs with you?

A. I have.

Q. Can you tell me the rate from Lake Erie ports on ore to the Youngstown, Ohio, district?

A. Yes, sir.

Q. What is it, please?

A. On direct ore, 56 cents a ton; on indirect ore, 64 cents.

Q. Will you just explain the difference between the rate on direct ore, as you call it, and the rate on indirect ore? Is there some other name for it besides indirect ore; is it called dock ore?

A. Yes, it is called dock ore. What I call direct ore is loaded from the ship direct to the car. What I call indirect or dock ore is delivered on the dock from the ship, and later re-loaded to the car.

Q. I did not catch, at the time of your answer a moment ago, whether you told us the difference between the rate on direct ore and the rate on dock ore.

A. I said the direct rate was 56 cents a ton, and the dock ore rate 64 cents a ton.

Q. That would make a difference of eight cents?

A. Yes, sir.

Q. In order that we may cover it with one question, if possible, is it true generally that the rates from the lower lake ports to any district or city show a difference of eight cents; that is, that the rate on direct ore is eight cents lower than the rate on indirect or dock ore?

A. That is true.

Q. So if I ask you for the direct rate, it can be understood that the dock rate or indirect rate will be eight cents more?

A. Yes, sir.

Q. Have you ascertained the average distance from lake ports to the Youngstown district?

A. Yes, I have them here. 66.9 miles.

Q. Will you tell me what that figure of 66.9 miles represents; is it the short line or the long line or the average, or what?

A. The short line.

MR. SEVERANCE: It is not the average at all, then? The question was as to the average.

THE WITNESS: I gave the average.

MR. CORNEAU: No, I asked him whether it was the short line or the long line or average.

MR. SEVERANCE: But the question you put before was the average distance to the Youngstown district, and he answered 66.9. Now he says it is the short line distance, as I understand.

(Upon request, the question and answer thereto were repeated by the stenographer as follows:)

"Q. Have you ascertained the average distance from lake ports to the Youngstown district?

"A. Yes, I have them here. 66.9 miles."

THE WITNESS: That is the average distance from Lake Erie ports to the Youngstown district, Shenango and Mahoning Valley district furnace points.

MR. SEVERANCE: It is not the short line?

THE WITNESS: It is the short line. The average is made up on short line distances.

By MR. CORNEAU:

Q. What you mean, I think, is that it is the average short line distance, is that correct?

A. I can give you the individual mileages, if you wish them.

MR. SEVERANCE: Never mind; I will not interrupt while you are examining.

By Mr. Corneau:

Q. Can you give me the rate on direct ore from Lake Erie ports to Aliquippa, Pennsylvania?

A. 78 cents a gross ton.

Q. And the distance, ascertained in the same way?

A. 105 miles.

Q. Will you give me the rate and distance ascertained in the same way, to the Pittsburg district?

A. The average to the Pittsburgh district, 135 miles.

Q. And the rate?

A. 96 cents a gross ton.

Q. Will you give me the rate to Columbus, Ohio, and the average distance ascertained in the same way?

A. 50 cents a gross ton; 138 miles.

Q. Now, the rate and distance to the Wheeling district.

A. The rate is 60 cents per gross ton, and the average distance is 160 miles.

Q. The rate and distance to Jackson, Ohio.

A. 62½ cents a gross ton; 217 miles.

Q. The rate and distance to Josephine, Pennsylvania?

A. 85 cents a gross ton; 228 miles.

Q. The rate and distance to Ironton, Ohio?

A. 90 cents a gross ton; 265 miles.

Q. The rate and distance to Ashland, Kentucky?

A. 90 cents a gross ton; 269 miles.

Q. The rate and distance to Cincinnati, Ohio?

A. 90 cents a gross ton; 289 miles.

Q. In some cases I have asked you in reference to the rates to a district, for instance, the Youngstown district, the Pittsburg district and the Wheeling district. Will you take those up, Youngstown first and the others in order, and tell us generally what territory is included in those districts, respectively.

A. Commencing with the Youngstown district?

Q. Yes. I do not care for an exact definition, but generally, so we will have an idea of it.

A. The eastern boundary of the Mahoning-Shenango Valley district, so-called, is New Castle. The Western point of that district is Warren, Ohio. The northern point of that

district is Shenango, Pennsylvania. That practically covers it. This is taking in all the points on railroads in that district, taking in about twelve points.

Q. Will you name the principal points in that district—the furnace points, I mean?

A. Shenango, Pennsylvania; Sharpsville, Pennsylvania; Sharon, Pennsylvania; South Sharon, Pennsylvania; Weekland, Pennsylvania; West Middlesex, Pennsylvania; New Castle, Pennsylvania; Warren, Ohio; Niles, Ohio; Girard, Ohio; Briarville, Ohio; Youngstown, Ohio; Haselton, Ohio; Struthers, Ohio; and Lowellville, Ohio.

Q. All those points, then, take the same rates, as I understand it?

A. Take a 56 cent rate on direct ore; yes, sir.

Q. Will you describe the Pittsburgh district in the same way?

A. The so-called Pittsburgh district includes the following furnace points; Neville, Pa.; Pittsburgh, Pa.; Rankin, Pa.; Braddock, Pa.; Duquesne, Pa.; McKeesport, Pa.; Clairton, Pa.; Donora, Pa.; Monessen, Pa.; Kittaning, Pa.

Q. Now the Wheeling district.

A. Steubenville, Ohio; Mingo Junction, Ohio; Martins Ferry, Ohio; Bellaire, Ohio; Benwood, West Virginia and Wheeling, West Virginia.

Q. State whether or not the points with respect to which you have given the rates are the principal ore-consuming points obtaining their supply of ore from the lower lake ports.

A. Those three districts?

Q. Those three districts, and the other points named, namely Aliquippa, Pennsylvania; Columbus, Ohio; Jackson, Ohio; Josephine, Pennsylvania; Ironton, Ohio; Ashland, Kentucky, and Cincinnati, Ohio.

A. Those are the principal points in which the rail haul is involved; yes, sir.

Q. Do you know of any point within 300 miles of a lower lake port which takes a rail rate on ore as high as the Pittsburg rate of 96 cents?

A. I do not know of any.

Q. I mean any furnace point.

A. I do not know of any; no, sir.

Q. Do you know whether or not any part of the 96 cent rate goes to the dock company as dock charge?

A. Two cents a ton.

Q. And in the case of dock ores, how much goes to the dock company?

A. Eight cents a ton.

Q. Do you know whether or not there is any additional dock charge on a shipment of ore, either coming to the dock or leaving the dock?

A. The only additional charge, I understand, that there is is the charge for unloading from the ship, to the rail of the ship.

Q. Do you know how much that is?

A. It is ten cents a ton now, since the first of May.

Q. State whether or not that is in addition to the 96 cents.

A. That is in addition to the 96 cents.

Q. And would therefore either be added to the steamboat rate or paid separately to the dock company, as the case might be?

A. Exactly.

Q. Can you give me the rates on ore from Michigan points, we will say Escanaba, Michigan and Ashland, Wisconsin?

A. You mean to those points?

Q. To those points. I will ask you, first, whether those points are lake ports at which ore originates to a considerable extent?

A. Yes, sir.

Q. Now can you give me the rates on ore from the nearby Michigan Ranges to those points?

A. From Iron River and Crystal Falls, Michigan, on the Northwestern Railroad, to Escanaba, a distance of 70 miles, the rate is 40 cents.

Q. That is Ecanaba?

A. Yes, sir.

Q. Have you the rates from some points to Ashland?

A. The rate from Bessemer, Michigan, and Iron Wood, Michigan, on the Soo Line to Ashland is 40 cents; the mileage is 58 miles.

Q. Is there a mining district near Baraboo, Wisconsin?

A. Yes, sir.

Q. Can you give me the distance and rate on that to a consuming point?

A. The rate on iron ore from Baraboo, Wisconsin, to Chicago, 190 miles, is 70 cents a gross ton.

Q. What is the rate from the Minnesota Ranges to Lake ports?

A. 60 cents a gross ton.

Q. How long has that been in effect?

A. Since November 30, 1911.

Q. What railroads?

A. The Duluth, Missabe & Northern, and the Duluth & Iron Range.

MR. SEVERANCE: Is that all?

THE WITNESS: And the Great Northern.

By MR. CORNEAU:

Q. Can you tell me what the rates on the Duluth, Missabe & Northern and Iron Range were prior to this change?

A. 80 cents a gross ton.

Q. Were the rates from all Duluth & Iron Range Points the same?

A. No, sir.

Q. What points took different rates, and what were they?

A. They were all the same except Tower Junction, which took a 90 cent rate, and Ely, which took a dollar rate. They have all been reduced to the same rate of 60 cents a ton.

Q. Can you tell me the average distance from the ranges to Lake ports over the Duluth & Iron Range, and over the Duluth, Missabe & Northern, or from some of the points, which represent the hauls either way?

A. From the points located either on the D. M. & N., such as Virginia, Mountain Iron, Hibbing, Coleraine, Eveleth, Sparta, Biwabik, Marble, Taconite, Chisholm and Sharon, the average distance is 78 miles; the rate is 60 cents a gross ton.

Q. Those are points on which railroad?

A. The D. M. & N. Railroad.

Q. Can you give me the same for the other line?

A. I have not the other line worked up.

Q. Have you computed the capacity of furnaces—I mean the ore-consuming capacity,—of the furnaces in the Pittsburgh District when under full operation?

A. Yes, sir.

Q. Please give us those figures.

A. 15,000,000 tons a year under full capacity

Q. Does that include Aliquippa?

A. Yes, sir; I believe that does.

Q. Have you got the capacity of Aliquippa separately?

A. 1,200,000 gross tons per year under full operation.

Q. By the way, I think I forgot to ask you in what connection you made your recent investigation concerning these ore rates. What was the reason and purpose of it?

A. The real purpose was in connection with our ore case, which we have filed before the Interstate Commerce Commission.

Q. What do you mean by "our ore case"?

A. I mean the Pittsburgh Steel Company against——

Q. And who were the parties to the complaint?

A. Against the rate to Pittsburgh of 96 cents a gross ton being unreasonable, based on the fact that other districts are permitted to get ore at about one half the rate for greater distances. We also complain that the Steel Corporation of course have their own railroad.

MR. SEVERANCE: I do not suppose this is important. You asked him why he made the investigation and he said he made it for the purpose of his ore case. The pleadings in the case will show what the charges are. However, I do not object if you wish to go into it.

MR. CORNEAU: That is sufficient.

By MR. CORNEAU:

Q. Have you computed the ore-consuming capacity of the Youngstown District, when all the furnaces are in full operation?

A. I have not, but my knowledge is that it is over 9,000,000 tons.

Q. Have you computed the capacity of the Wheeling District?

A. Yes, sir.

Q. By the way, before we go to that, when you say the Youngstown District has a capacity of over 9,000,000 tons, how much over would you say?

A. 600,000 tons over that, so that it would approximately be 9,600,000 tons.

Q. Now, take the Wheeling District.

A. 3,200,000 tons, when under full operation.

Q. The Columbus District or Columbus, Ohio—I do not know whether that is a district or not?

A. It is not a district, no. About 700,000 gross tons when under full operation.

Q. Take Ironton, Ohio.

A. About 500,000 tons when under full operation.

Q. Josephine, Pennsylvania?

A. About 600,000 gross tons under full operation.

Q. Is that as to the present time?

A. Of the present time; yes, sir.

Q. Ashland, Kentucky?

A. About 100,000 gross tons when under full operation.

Q. Jackson, Ohio?

A. 60,000 gross tons under full operation.

Q. Cincinnati, Ohio?

A. I do not have the Cincinnati consumption.

Q. Can you approximate it?

A. No, sir.

Q. Do you know whether it is large or small?

A. It is small.

Q. Would you say as great as 50,000 tons?

A. I would not like to say. I do not know whether that district is in operation or has been for a long time.

(Thereupon an adjournment was taken until tomorrow, Wednesday, October 9, 1912, at 10.30 o'clock a. m.)

TWENTY-EIGHTH DAY.

ROOM 309, FEDERAL BUILDING,
PITTSBURGH, PENNSYLVANIA,

October 9, 1912.

The hearing was resumed at 10:30 o'clock a. m., before Special Examiner John A. Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Corneau.

Present on behalf of the defendants, Mr. Lindabury, Mr. Severance, Mr. Bolling, and Mr. Reed.

A. R. KENNEDY,

the witness under examination when the adjournment was taken, resumed the stand.

DIRECT EXAMINATION (Continued),

By MR. CORNEAU:

Q. Mr. Kennedy, have you computed the capacity of the furnaces of the Steel Corporation in the Pittsburgh district?

A. Yes, sir.

Q. What is it?

A. About 11,000,000 tons, under full operation, annually.

Q. Do you know about what the total capacity of the furnaces in Youngstown district is?

MR. SEVERANCE: You mean of the Corporation?

MR. CORNEAU: No, the total, I said.

THE WITNESS: I believe I gave that yesterday, as about 9,600,000 gross tons annually, under full operation.

By MR. CORNEAU:

Q. And have you computed the capacity of the Corporation's furnaces in that district?

A. I have not, but I understand it is less than 50 per cent.

Q. Can you state about how much less—that is whether it is between 45 and 50 or between 40 and 45—as nearly as you can approximate it?

A. I think it is closer to 40.

Q. Have you computed the Corporation's percentage of blast furnace capacity in the Wheeling district?

A. I have not that separated, no.

Q. Have you the data from which you can ascertain the figures?

A. I believe so; yes, sir. (After calculation). Approximately 2,000,000 tons annually.

Q. All these figures you have given here are annual capacities, are they not?

A. Annual capacities, yes, sir.

Q Have you computed the Corporation's furnace capacity in the Columbus district?

A. Yes, sir.

Q. What is it, please?

A. 360,000 gross tons.

Q. Does the 96 cent rate from lake ports to Pittsburgh apply by way of the Bessemer & Lake Erie Railroad?

A. Yes, sir.

Q. Does that road make delivery to the furnaces over its own rails?

A. No, sir.

Q. Over what road is delivery made to the blast furnaces?

A. The Union Railroad; that is, on the ore the Bessemer & Lake Erie handles.

Q. Can you give me the capacity of the furnaces served by the Bessemer & Lake Erie and Union Railroads?

A. I cannot give you that exactly, but it is approximately 7,000,000 tons annually.

Q. Do you know what division of the total rate of 96 cents is given to the Union Railroad by the Bessemer & Lake Erie?

A. Yes, sir.

Q. What is it, please?

A. 26 cents a ton.

Q. Do you know whether or not the other railroads publish rates from lake ports to Pittsburgh by way of their own lines and the Union Railroad to the same furnaces as those served by the Union Railroad on Bessemer & Lake Erie shipments?

A. They do.

Q. Do you know what proportion is given to the Union Railroad by these other railroads for like service; that is, for delivery of ore at furnaces located on the Union Railroad?

A. Ten cents a ton; that is, provided they happen to haul any of such ore.

Q. I understand. How does the tonnage into and out of the Pittsburgh district generally compare with the tonnage into and out of the Youngstown, Wheeling, Columbus, Ohio, Ashland, Kentucky, and other districts that have been named? I mean the general freight tonnage coming to or going from the different districts.

A. The density of traffic in and out of the Pittsburgh district is much greater than any other district to which ore moves; considerably greater.

Q. Do you know, in a general way, whether or not the traffic over the Bessemer & Lake Erie compares favorably or unfavorably in density with the traffic over the roads to and from the other districts than the Pittsburgh district?

A. In my judgment I think the Bessemer & Lake Erie traffic is very dense, and is considerably higher in volume than the other districts outside of the Pittsburgh district.

Q. What kind of cars are used for hauling ore?

A. Gondola and hopper cars.

Q. Do you know what sort of freight moves to lake ports for which the gondola or hopper cars would be available?

A Coal traffic.

Q. Anything else?

A. Some coke.

Q. Anything else?

A. General iron and steel products can be loaded in open cars, especially gondola cars.

Q. How does the general traffic in coal and coke and these other commodities that move toward the lake, and which can be loaded in gondola or hopper cars from the Pittsburgh district, compare with the traffic in similar commodities to the Lakes from the other districts?

A. It is about two or three times as great as from other districts.

Q. With particular reference to coal, do you know whether or not coal originates in these other districts for shipment to the Lakes?

A. It does not directly in the other districts, as it does in the Pittsburgh district; and it involves a considerable haul of empty cars to the coal mines from other districts.

Q. While, as I judge from your answer as to the Pittsburgh district just now, the coal originates substantially at the point where the ore is delivered?

A. Practically; yes, sir. Within a radius of a very few miles.

Q. So that in the matter of return hauls for the cars which have come from the Lakes, how does the Pittsburgh district compare with the other districts?

A. It is very much in favor of the Pittsburgh district.

Q. Are you at all familiar with the lines of railroad serving the Pittsburgh district and these other districts?

A. In a general way; yes, sir.

Q. Have you ever been over them?

A. Yes, sir.

Q. Did you have opportunities, in going over them, to observe something of the operating conditions, in a general way?

A. I did; they were all daylight trips.

MR. SEVERANCE: Of which road are you speaking?

By MR. CORNEAU:

Q. Just name the roads that you have in mind, Mr. Kennedy.

A. Commencing with the Bessemer & Lake Erie, the P. Y. & A. Division of the Pennsylvania Lines—

MR. SEVERANCE: What division is that?

THE WITNESS: The Pittsburgh, Youngstown & Ashtabula. The Cleveland & Pittsburgh Division of the Pennsylvania Lines.

The Erie Railroad, in connection with the P. & L. E., into the Pittsburgh district, as well as in the Youngstown district.

The Lake Shore into Youngstown, and the Lake Shore and the P. & L. E. into Pittsburgh.

The B. & O. into Pittsburgh and Youngstown.

The Pennsylvania from Cleveland and Ashtabula to the Wheeling district.

The Wheeling & Lake Erie from the Lorain district and Cleveland to the Wheeling district.

The Hocking Valley into the Ironton, Ashland and Jackson districts.

The Pennsylvania into Columbus, and the Big Four into Columbus.

I might add that the Norfolk & Western is a part of the southern Ohio-Kentucky routes, over which I traveled, and is a part of the ore-carrying routes to that district from lake ports.

I think that covers it pretty well.

Q. Have you also been at the Lake ports themselves, and, if so, have you observed the operations there?

A. I have been at all the ports from Toledo to Buffalo.

Q. Is there any difference in the character of service at any of these points? I refer now to the switching service, loading, and so forth. Is there any difference in that service whether the freight is going to Pittsburgh or to some other district?

A. Absolutely the same.

Q. How is it with respect to terminal service?

A. The terminal service at ports is, of course, all the same. That is, in relation to the switching, that you spoke of before, it makes no difference whether ore is going to Wheeling or Pittsburgh or southern Ohio or some other district, it is all the same service, so far as loading and switching in the trains, and weighing, and so forth are concerned.

Q. As to the service at the furnaces in the Pittsburgh District, do you know whether or not that is performed by the trunk line?

A. In some instances; in a great many instances.

MR. SEVERANCE: Do you mean the delivery of cars, the spotting of cars?

MR. CORNEAU: I mean the spotting of cars, yes.

THE WITNESS: The practice in the Pittsburgh District, in connection with blast furnaces, is that the trunk lines place the cars at interchange tracks with furnace plant lines. Practically all of them have switching lines from which point the terminal or plant lines place the ore where needed by the furnace people.

By MR. CORNEAU:

Q. What is the practice in the other districts?

A. In the other districts the trunk lines hauling the ore perform the service for the furnaces, and place the cars where needed.

Q. Have you made some investigation with reference to the cost of hauling ore over the Bessemer & Lake Erie Railroad?

A. I have.

Q. After all of your investigations, Mr. Kennedy, are you able to state any reason justifying a higher rate to Pittsburgh over the Bessemer & Lake Erie and the other lines serving that territory from Lake ports than is made to other furnace points further in distance from the Lake ports?

A. I cannot conceive the reason, no sir.

Q. You say you cannot conceive the reason?

A. (Continuing) For a higher rate to the Pittsburgh district than to other districts, where the distance is equal or greater.

Q. Can you conceive any reason why it should be to the interest of the Steel Corporation to maintain a high rate over the Bessemer & Lake Erie to Pittsburgh?

MR. SEVERANCE: Objected to as incompetent and purely speculative. The witness has said he cannot conceive of any

reason why the rate should be higher to Pittsburgh than to these other points, and counsel should not cross examine his own witness or endeavor to induce him to contradict himself.

By Mr. Corneau:

Q. I will ask you just what you meant by the word "reason" when you used it a moment ago, when you stated that you could not conceive any reason?

A. When I made that answer I expected to give an explanation in connection with the Bessemer & Lake Erie route.

Q. Just give that explanation.

A. It is to the advantage of the Steel Trust, as I see it, to maintain a high rate——

Mr. Severance: I object to this as purely speculative. The witness has not shown himself qualified to testify as an expert, and it is not a subject for expert testimony. It is for the Court to determine from the facts, and not for this witness to speculate about it.

By Mr. Corneau:

Q. Now, you may go ahead.

A. The reason that the income derived by the Bessemer & Lake Erie on all ore transported for the Steel Corporation within the Pittsburgh District, which that line serves in connection with the Union Railroad, is to give the Steel Corporation the benefit of that much additional freight that everybody else has to pay in the Pittsburgh District in the producing of pig iron.

Q. Do you know whether or not ore for other concerns than the United States Steel Corporation is shipped over the Bessemer & Lake Erie Route or moves over it?

A. I understand it is not. I understand that all they handle is their own ore, consumed by their own furnaces.

Mr. Corneau: I will ask the stenographer to read the answer before the last one.

(The stenographer read as follows:)

"A. The reason that the income derived by the Bessemer & Lake Erie on all ore transported for the Steel Corporation

within the Pittsburgh District, which that line serves in connection with the Union Railroad, is to give the Steel Corporation the benefit of that much additional freight that everybody else has to pay in the Pittsburgh District in the producing of pig iron."

THE WITNESS: That is not, perhaps, very clear. The difference between the cost of the service of the Bessemer & Lake Erie Road and the actual published tariff rate is the benefit the Steel Corporation derives over other producers in the Pittsburgh District.

By MR. CORNEAU:

Q. Explain a little more fully just why that is?

A. The published rate is 96 cents. All above the cost of handling that ore, which I understand to be 28½ cents a ton, including the loaded and empty movement, 68 cents a ton, is the benefit they derive on one ton of ore between Conneaut Harbor, Ohio, and their furnaces served by the Union Railroad in the Pittsburgh District on ore carried by the Bessemer & Lake Erie, requiring two tons of ore to make one ton of pig iron.

Q. You say that is the benefit they derive. You mean as against their competitors?

A. Exactly.

Q. That is what I am trying to get into the record. What position are the competitors in with reference to rates?

MR. SEVERANCE: Competitors of whom?

MR. CORNEAU: Of the Steel Corporation.

THE WITNESS: The competitors of the Steel Corporation in the Pittsburgh District not located on the Union Railroad are compelled to pay the tariff rate of 96 cents a ton.

By MR. CORNEAU:

Q. To whom?

A. To the trunk lines.

Q. Mr. Kennedy, have you made some similar investigations with reference to the Duluth, Missabe & Northern and the Duluth & Iron Range Railroads?

A. You mean as to the cost?

Q. As to the rates and operating conditions, and the like.

A. I have in detail as to the rates, and in a general way as to the operation.

Q. By the way, I asked you last night if you could give me the average distance over the Duluth & Iron Range to Lake ports. Have you computed that since then?

A. Yes, sir

Q. What is it?

A. I do not have the average. I have the details from each mine to Two Harbors, Minnesota.

MR. SEVERANCE: You have what?

A. I have the mileage from each point to Two Harbors, Minnesota. I will give those. From Virginia to Two Harbors, 69 miles; from Eveleth, 72 miles; from Sparta, 68 miles; from Pettit, 66 miles; from McKinley, 63 miles; from Biwabik, 59 miles; from Aurora, 52 miles; from Colby, 50 miles; from Missabe, 50 miles; from Tower Junction, 69 miles; from Ely, 89 miles; the rate is 60 cents per gross ton.

Q. How would you say the ore tonnage over the D. M. & N. and the D. & I. R. compares with the tonnage over the Michigan railroads to Michigan ports—favorably or unfavorably?

MR. SEVERANCE: Objected to as not being a question for expert testimony. The witness has not shown himself qualified to answer it, or that he knows anything about the subject.

By MR. CORNEAU:

Q. Have you made some investigation, Mr. Kennedy, with reference to the amount of tonnage moving to these different ports?

A. I have.

Q. Do you know what roads serve the different ports?

A. I do.

Q. Is that information sufficient to enable you to say, generally speaking, whether or not the tonnage over the D. & I. R. and D. M. & N. is heavier or lighter than the tonnage moving over any road to the Michigan ports.

A. Yes.

Q. Will you state what the condition is with respect to that; that is, whether the tonnage over the D. M. & N. and the D. & I. R. is heavier or lighter than the tonnage over the Michigan roads to the Michigan ports?

MR. SEVERANCE: I object to that, on the ground that the witness has not qualified himself to answer except by the mere statement that he has made an investigation.

MR. CORNEAU: You may cross examine him with reference to what he has done, if you wish.

By MR. SEVERANCE:

Q. Have you ever been up to those ports?

A. Yes.

Q. You have been over the roads?

A. Yes, sir.

Q. How many times?

A. At least twice.

Q. When?

A. In the past two years.

Q. You have been over each one of these roads?

A. Yes, sir.

Q. How long did you spend on the roads each time?

A. A day at a time.

MR. CORNEAU: Are you cross examining with reference to his knowledge of the tonnage?

MR. SEVERANCE: Yes; that is what I am trying to get at.

MR. CORNEAU: I thought perhaps you wanted to find out about the ties and roadbed, and so forth.

By MR. SEVERANCE:

Q. So that you have spent a matter of two days on each one of the roads?

A. No, sir; one day on each road.

Q. One day on each road altogether?

A. Yes.

Q. And from that you propose to testify?

A. One day each time I was up there.

Q. Two days, for the two times?

A. Yes.

Q. Two days, two times, two years?

A. Right.

MR. SEVERANCE: I object. The witness has not shown himself qualified to testify.

By MR. CORNEAU:

Q. What roads serve Two Harbors, Michigan?

A. The D. & I. R.

MR. SEVERANCE: There is no such place as Two Harbors, Michigan.

By MR. CORNEAU:

Q. I mean Two Harbors, Minnesota.

A. The D. & I. R. only.

Q. What is the tonnage of ore that moves through that port?

A. For the year 1909 it was 9,116,150 tons.

For the year 1910, it was 8,271,165 tons.

Those are the last figures that I have on the tonnage through Two Harbors.

Q. What is the tonnage through the port of Escanaba, Michigan?

A. For 1909, 5,632,421 tons.

For 1910, 4,959,869 tons.

Q. What is the tonnage through Marquette, Michigan?

A. For 1909, 2,877,191 tons.

For 1910, 3,248,929 tons.

Q. By the way, I forgot to ask you how many roads reach Escanaba, Michigan, if you know, from the ranges?

A. Just two. Just the one range line, the Chicago & North Western, and a small line called, I think, the Lake Superior & Ishpeming.

Q. How many roads reach Marquette, if you know, from the ranges?

A. The D. S. S. & A. and a small line the name of which I cannot remember—Munising something or other.

Q. The Munising Railway?

A. I believe so; but the D. S. S. & A. is the principal line.

Q. What has been the tonnage in the same ore through Ashland, Wisconsin?

A. Through Ashland, Wisconsin, in 1909, 3,736,744 tons. In 1910, 4,093,822 tons.

Q. How many roads reach Ashland?

A. From the iron ore district?

Q. Yes.

A. The Chicago & North Western, the Soo Line; and that is all, I believe.

Q. Now, in regard to Duluth.

A. You want the figures for Duluth?

Q. Yes.

A. For Duluth, in 1909, 13,296,326 tons.

For 1910, 13,609,155 tons.

Q. What roads serve Duluth?

A. From the iron ore district?

Q. Yes.

A. The Duluth, Missabe & Northern principally; and the Duluth & Iron Range incidentally.

Q. Any others?

A. Not for ore.

Q. The Great Northern does not serve Duluth for ores?

A. No, sir.

MR. CORNEAU: Do you think that data enables him to approximate it, Mr. Severance?

MR. SEVERANCE: I do not think he knows anything about it.

By MR. CORNEAU:

Q. Where did you get those figures that you have read, Mr. Kennedy?

A. These figures here are furnished by the "Iron Age," and I understand conform with those prepared by the Government.

Q. Have you ever seen the Government's publication on the subject?

A. I have not.

Q. Have you before you the Government publication?

A. I do not have the Government report showing that detail.

Q. What is that publication you have in your hand?

A. This shows the different kinds of ore that move through certain points. It does not say how it did move. It gives the different kinds of ore and where it originated; on what range. I never studied that report very closely, and I do not know what it is, clearly.

Q. Mr. Severance wants to know about Superior. Have you the figures showing the movement of ore through Superior?

A. I have. For 1909, 6,505,527 tons. For 1910, 8,437,261 tons.

Q. Where does that ore come from?

A. Fom the Minnesota Range mines.

Q. Over what road or roads?

A. The Great Northern.

Q. How is Superior located, with reference to Duluth?

A. They are about five miles apart, on the bay.

Q. The tonnage of thirteen million odd that you gave a while ago for Duluth is separate and apart from the other tonnage you gave for Superior, is it, and is shown separately in the statistics?

A. I understand so; yes, sir.

Q. The tonnage at Superior would have nothing to do with the comparison about which I was asking you with reference to the tonnage over the D., M. & N. and the D. & I. R., as to whether it was heavier than the tonnage over the Michigan roads, would it?

A. No, sir.

Q. What is the fact as to whether the tonnage over the D., M. & N. and the D. & I. R. compares favorably or unfavorably with the tonnage over the Michigan roads in ore to Michigan ports?

MR. SEVERANCE: That is objected to as not a question for expert testimony, and as incompetent and immaterial. The witness has not shown himself qualified to answer.

THE WITNESS: From the observance of these figures, the tonnage through Duluth and Two Harbors, Minnesota, would be more than three to one against the Michigan ports.

By MR. CORNEAU:

Q. That is to say, the tonnage over the Duluth, Missabe & Northern and the Duluth & Iron Range would be heavier than the tonnage over these other roads?

A. About three times as heavy; yes, sir.

Q. What are the operating conditions on the D., M. & N. and the D. & I. R., with reference to grades being with or against the loaded freight?

A. They are in favor of the loaded movement.

MR. SEVERANCE: Objected to on the ground that the witness has not shown himself qualified to testify. Merely riding over the road twice would give him no information.

MR. CORNEAU: It would not?

Q. Did you have any difficulty in observing what the grades were when you went over the D., M. & N. and the D. & I. R.?

A. No, sir.

Q. It was pretty obvious, was it?

A. Yes, sir.

Q. Does the character of the service at the docks of Duluth and Two Harbors differ from the character of the service at the Michigan docks?

A. Not materially. There are a little better improvements at the heavy ports.

Q. But they have the same service to perform in the way of sorting, loading, switching, and things of that kind?

A. Practically so.

Q. Is or is not that same thing true with reference to the service at the mines in Michigan as compared with the service at the mines in Minnesota?

MR. SEVERANCE: I object to that on the ground that the witness has not shown himself qualified to give any testimony in regard to it.

THE WITNESS: In a general way, yes. There is some little difference, of course.

By MR. CORNEAU:

Q. As a practical traffic man, do you know of any condition or consideration that would warrant higher rates over

the D., M. & N. and the D. & I. R. on ore from the ranges served by them to Duluth and Two Harbors, than are charged over the Michigan roads, say from the ranges you named yesterday to Escanaba and Ashland?

A. I cannot conceive any reason for it; no sir.

Q. Have you examined, Mr. Kennedy, the tariffs showing the rates from Cleveland and Lorain to the Youngstown district?

A. Yes, sir.

Q. Has the Corporation a railroad at Lorain—I mean the Corporation or any of its subsidiaries?

A. Yes, sir.

Q. What is it?

A. The Lake Terminal Railroad.

Q. Does the Lake Terminal Railroad participate in the rates on ore from Lorain, coming by way of the Coporation docks to Youngstown?

A. Yes, sir.

Q. What is its division?

A. Ten cents a ton.

Q. Has the Corporation docks and railroad at Cleveland?

A. Yes, sir.

Q. What is its railroad?

A. The Newburg & South Shore.

Q. Does that road participate in the rates on ore coming by way of the Corporation docks to Youngstown?

A. Yes, sir.

Q. What is its division?

A. Ten cents a ton.

Q. Do you know whether or not the Corporation railroads, the Bessemer & Lake Erie and the E., J. & E. and any others, are members of the different railroad traffic associations and classification committees?

A. The Bessemer & Lake Erie is a member of the Pittsburgh Freight Committee and also a member of the Central Freight Association. The E., J. & E. is a member——

Q. Pardon me; how about the Trunk Line Association?

A. I do not know whether they are a direct member, but they have representation, direct or indirect. The E., J. & E.

is a member of the Central Freight Association, and, I understand, is also a member, represented directly or indirectly, in the Western Trunk Line Association.

As to the classifications, the Bessemer & Lake Erie is either a member or is represented, directly or indirectly, at Official Classification meetings, and participates in that issue in connection with practically all rates.

Q. What are the territorial jurisdictions of these different traffic associations?

A. The Central Freight Association, as I understand, commences at Buffalo, as the eastern end of the territory; Pittsburgh is also in C. F. A. territory, and is considered the western terminus of the Trunk Line. That territory follows south, including Cincinnati and along the Ohio River, and west, including the points east of the Mississippi River, and north as far as the Lakes, including Michigan. That is, in brief, the outline of it.

Q. And the Trunk Line territory is east of Buffalo and Pittsburgh?

A. The Trunk Line territory comprises the New England States, New York State, eastern Pennsylvania and all points east of Pittsburgh, and south as far as what are known as the Virginia Cities, Richmond, Norfolk, and so forth.

Q. Who are the members of these associations? I do not mean to name each one, but I mean are they railroads or other concerns, or what?

A. They are railroads entirely.

Q. What are the functions of these associations?

MR. SEVERANCE: Let me ask whether the witness has ever attended any of these meetings and knows anything about them.

MR. CORNEAU: Very well.

By MR. SEVERANCE:

Q. Have you ever attended any of these meetings?

A. Yes, sir.

Q. You have attended the meetings?

A. Yes.

Q. You are a member of the association, are you?

A. No, sir; I slipped in.

By Mr. Corneau:

Q. Will you just state in a general way whether or not the purpose and functions of these traffic associations are matters of very general knowledge among traffic men?

A. They are, yes, sir; very general knowledge among railroads only.

Q. I say the functions, purposes, and what they are for?

A. Yes, sir; that is generally known.

Q. Go ahead and state in a general way what their functions are.

A. Their functions would be to give consideration to all the adjustments of rates and rules and regulations in connection with rates, loading, minimum weights, and a dozen other things of slight importance.

Q. And the classification committees?

A. The classification committees' duties are to consider subjects placed before those committees, either by industrials or by railroads themselves, for increases or decreases in the classification basis, for changes in minimum weights and rules. I think that covers it pretty generally.

Mr. Corneau: That is all.

CROSS EXAMINATION.

By Mr. Severance:

Q. Do you not know, as a matter of fact, that the Central Freight Association has nothing whatever to do with fixing rates or classifications upon ore, limestone or coke?

A. I do know that, yes.

Q. You know they have nothing to do with it?

A. Yes.

Q. Then the fact that the Bessemer & Lake Erie is a member of the Central Freight Association would not give that railroad any voice as such member in making rates on ore, coke and limestone, if the Association did not touch those three subjects, would it?

A. No, sir.

Q. Do you not know, as a matter of fact, that the Bessemer & Lake Erie is not a member of the Trunk Line Association, and that it has no representation on that Association, either directly or indirectly?

A. I do not know that, no sir.

Q. Do you know anything about it; do you undertake to swear that they are members?

A. I said I understood——

Q. You are under oath here.

A. Exactly.

Q. You are not supposed to speculate, but simply tell what you know.

MR. CORNEAU: Suppose you stop arguing with the witness.

MR. SEVERANCE: I am not arguing with the witness. I am instructing the witness. He has shown his attitude by his last answer, where he admits that the B. & L. E. has nothing to do with the rate on ore, coke and limestone.

MR. CORNEAU: He said he understood so and so.

By MR. SEVERANCE:

Q. Do you undertake now to swear—I want you to answer this question yes or no—that the Bessemer & Lake Erie Railroad is a member of the Trunk Line Association, or has any representation, direct or indirect, in that Association?

A. Except what I have heard.

Q. Do you undertake to swear that the Bessemer & Lake Erie is a member of the Trunk Line Association, or has any representation, direct or indirect, in that Association? I want an answer yes or no.

A. It cannot be answered that way.

Q. It cannot?

A. No, sir.

Q. You decline to say yes or no to that question?

A. Yes, sir.

Q. Who told you? You said it was what you heard. Who told you?

A. I have heard it from various sources.

Q. Name one person.

A. I decline to answer that.

Q. I will ask that the witness be directed to answer. That is a proper question, this is perfectly proper cross examination. Counsel will say it is proper.

MR. DICKINSON: No; I think if he states it is hearsay that then it would go out as incompetent, and being hearsay I do not think it is properly the subject matter of cross examination. He has shown that it is hearsay.

MR. SEVERANCE: Then, do I correctly understand, Judge Dickinson, that the answer of the witness may be disregarded, that his statement that they are members of that association may be disregarded?

MR. DICKINSON: I think it is a rule of law that if a man states he has only heard of a matter that it is not evidence.

MR. SEVERANCE: You admit it is not evidence.

MR. DICKINSON: I think every lawyer would admit that, unless he heard it from somebody who was involved in the matter.

MR. SEVERANCE: I ask that the witness be directed to answer my question as to the name of the person from whom he heard that.

THE WITNESS: I decline to answer.

MR. SEVERANCE: I ask you, Mr. Examiner, that you require the witness to answer.

EXAMINER BROWN: Mr. Severance, the examiner has no authority to compel a witness to answer if he declines to do so.

By MR. SEVERANCE:

Q. Mr. Kennedy, you stated, as I understood you, in answer to counsel for the Government, that the Bessemer & Lake Erie is a member of the Classification Committee. Do you not know, as a matter of fact, Mr. Kennedy, that the Bessemer & Lake Erie is not a member of the Classification Committee?

A. It was hearsay on my part.

Q. Is all your testimony hearsay?

A. No, sir.

Q. Are you in here to argue things and not testify?

A. Not necessarily.

MR. CORNEAU: I object to that statement of counsel's. He has not argued anything.

MR. BOLLING: He did not state before that it was hearsay on his part, but made the direct statement.

MR. SEVERANCE: Let us hear his answer on that. Let the testimony be read. As it does not seem to be available, we will not stop for that. The record will show that he testified positively on that

MR. CORNEAU: Yes, the record will show.

By MR. SEVERANCE:

Q. You stated that the Central Freight Association territory included everything east of the Mississippi River and north of the Ohio down to Buffalo?

A. Practically so; yes, sir. That is the general outline—

Q. Then, it includes the Old Range territory in Michigan and Wisconsin that you testified about?

A. Southern Michigan, I said.

Q. Did you say that?

A. I think so.

Q. Do you not know that you did not say that?

A. No; I do not know anything of the kind.

Q. You said Mississippi River and north of the Ohio. You said that you knew of no traffic conditions justifying higher rates on the Duluth, Missabe & Northern, and the Duluth & Iron Range than those on the Soo and Northwestern in Michigan. That is right, is it not—you did say that?

A. I said in Michigan, I think, did I not?

Q. You have testified, and I call attention to the fact, as to movements from the old range to Ashland over the Soo.

A. Yes, sir.

Q. And Ashland is in Wisconsin and not in Michigan, is it not?

MR. CORNEAU: Just over the line.

A. Just right there at the line.

By MR. SEVERANCE:

Q. Is not Ashland in Wisconsin?

A. I will grant you that; yes, sir.

Q. Then, did your answer include Wisconsin and Michigan both, or only Michigan?

A. In connection with Ashland it included both states.

Q. That is what I thought. Is not one thing of some importance in determining rates on any specific commodity the amount of other commodities that move over the same rails?

A. Yes, sir.

Q. You know, do you not, that Ashland, Wisconsin, is an important lake port?

A. It is.

Q. It is a port at which large movements of merchandise are discharged for distribution over the country—merchandise coming from the east. Is not that true?

A. Not very large amounts, no.

Q. What is the tonnage?

A. They have not the facilities for handling large amounts there.

Q. What is the tonnage?

A. I do not know the tonnage.

Q. Have they not very good sized docks there?

A. Not very good.

Q. At which ships coming up the lakes stop?

A. Not near the capacity of Duluth and Superior.

MR. CORNEAU: Are you talking about tonnage from the upper peninsula of Michigan? That is what he is talking about.

MR. SEVERANCE: No; you do not apprehend my question. I am showing that these roads that handle Michigan ore have a lot of business besides that.

MR. CORNEAU: The D. S. S. & A. does not run down into Michigan.

MR. SEVERANCE: I am talking about the Soo.

MR. CORNEAU: Well, the Soo does not, from that territory.

MR. SEVERANCE: It does not?

MR. CORNEAU: No.

MR. SEVERANCE: The Soo, I will state for the benefit of counsel, is the lessee of the Wisconsin Central, and runs through Wisconsin; and I will state further, for the informa-

tion of counsel, that it has a line running down to St. Paul and Minneapolis, reaching Ashland and Duluth.

By Mr. Severance:

Q. Do you not know, as a matter of fact, that large amounts of merchandise come up the lakes, are discharged at Ashland, and move out over the same rails, over the Soo road, that brings in ore?

A. Not large amounts, no sir; not to my knowledge.

Q. You do not know anything about how much it is, do you?

A. No, sir.

Q. Do you know, as a matter of fact, that the movement of other commodities over the Iron Range and the D. M. & N. is very small in proportion to the ore movement?

A. I appreciate that; yes, sir.

Q. You know that, do you not?

A. Yes, sir.

Q. And you know that the cars that bring down the ore in most cases go back empty, do you not?

A. Yes, sir.

Q. And that involves, then, instead of a haul on the average of 78 miles over the D. M. & N. a loaded haul of 78 miles and an empty haul of 78 miles on the same car?

A. Practically so, yes, sir.

Q. And the same double haul is necessary on the Duluth & Iron Range?

A. Yes, sir.

Q. Is that an all the year around business?

A. No, sir.

Q. How many months of the year does it continue?

A. I should say seven months.

Q. What use can the Duluth, Missabe & Northern and the Duluth & Iron Range put their ore cars to during the other five months of the year?

A. Nothing but coal.

Q. And there is very little of that in proportion to the total number of cars available?

A. I will answer that yes.

Q. You have given the average distance over the Duluth,

Missabe & Northern as 78 miles—you testified to that yesterday afternoon?

A. Yes.

Q. Have you the detail of that before you?

A. Yes.

Q. In front of you now?

A. Yes.

Q. The distance to Coleraine is 86 miles, is it not?

A. Yes, sir.

Q. And that is out where the washing plant is located, is it not?

A. I do not remember the plants, no, sir.

Q. You do not know anything about the washing plant? Your observation was not sufficient up there to notice that?

A. Not to take in the names of the plants; no, sir.

Q. I am not talking about a mine; I am talking about the big washing plant. Did you see that?

A. Yes; I saw that.

Q. You could not travel through that country without seeing it. It is up in the air?

A. Yes.

Q. That is Coleraine, is it not?

A. Yes, sir.

Q. What is the distance to Taconite?

A. 83 miles.

Q. And Hibbing?

A. 84 miles.

Q. Correct. What is the distance to Biwabik?

A. Eighty miles.

Q. 81 miles, is it not?

A. 80 miles, I figure it.

Q. And to Chisholm?

A. 83 miles.

Q. The mines that were covered by the Hill lease, from which a great amount of this ore is taken which is moved down to Duluth, are over in the vicinity of Coleraine, are they not?

A. I could not testify to that.

Q. Do you know about that?

A. I do not. I do not know anything about the Hill leases.

Q. You do not know, as a matter of fact, the average distance the ore is hauled that is included in this total of 13,000,000 odd tons hauled to Duluth in 1909 or 1910, do you?

A. I could not tell you how much originates at each point; no, sir.

Q. You do not know where it comes from?

A. No, I could not divide it up.

Q. So, for all you know, one-half that tonnage may have come from Coleraine, 86 miles away, instead of from other places 78 miles away?

A. My observation is that a majority of it comes from Hibbing and Virginia.

Q. And that was that two days' observation, one day at a time on two different occasions?

A. Yes, and general conversation up there.

Q. General conversation?

A. Yes.

Q. A little more hearsay. Hibbing is 84 miles, is it not?

A. Yes, sir.

Q. That is within two miles as far as Coleraine. So I do not think you and I will quarrel over those two miles. If a majority of it comes from Hibbing and Virginia, a lot of it comes 84 miles, does it not?

A. I suppose it does; yes, sir.

Q. You realize, do you not, Mr. Kennedy, as a skilled traffic man, that in fixing rates you have to give some consideration to the value of the property employed in the transportation?

A. I guess that is considered slightly; yes, sir.

Q. It ought to be, ought it not?

A. It should be, yes.

Q. If you spent $15,000,000 or $20,000,000 on a road you would hardly say that commodities should be transported over the road at the mere cost of transportation, would you?

A. Well, I would first figure on the ratio of operating expenses.

Q. Certainly. I say you would not claim that it would be fair to the railroad, to the owners of the property, to give

them a rate which would merely cover the cost of conducting transportation over that property?

A. I would say not.

Q. You would have to make the rate high enough to include that and the cost of maintenance, and interest charge upon the cost of the property, would you not?

A. I should think so; yes, sir.

Q. You stated a while ago, in reference to the Bessemer & Lake Erie, and the alleged advantage that the Steel Corporation possesses over companies that do not own a road like the Bessemer & Lake Erie, as follows: You said the difference between the published rate of 96 cents and the cost of 28¼ cents a ton, which it costs the Bessemer & Lake Erie to handle this traffic, was the benefit or advantage derived by the corporation by the ownership of that road?

A. In the movement to Pittsburgh from Conneaut Harbor, yes.

Q. Why, in view of your last statement, that you should include not only the cost of transportation, but the interest on the investment, do you eliminate in that statement all reference to the interest on the investment?

A. I do not claim that they should actually only earn 28 cents a ton. If they have certain fixed charges which are proper, and the capital stock is not watered, then I would say make the interest right and add that to your rate, and get a reasonable rate.

Q. Wait a minute. I am trying to discuss with you now your former answer.

MR. CORNEAU: You had better get his former answer; let us have the actual testimony.

MR. SEVERANCE: Very well, if we can get it. He was asked the question by Mr. Corneau as to the advantage possessed by the Steel Corporation over the independents by reason of the ownership of that road.

By MR. SEVERANCE:

Q. Well, if I am correct in my recollection, and my notes are correct as to what you said, that the benefit possessed by the Steel Corporation over that enjoyed by parties not own-

ing a railroad in the steel business was the difference between the published rate of 96 cents on ore and the cost of 28¼ cents a ton for handling that ore; you do not stand for that answer now, do you?

A. I modify that to the extent of saying that they should be entitled to some compensation for their investment.

Q. Did that 28¼ cents include maintenance charges?

A. I understand it does; yes, sir.

Q. From what do you understand it?

A. It includes all charges in connection with the movement. It does not specify maintenance charges and the handling of the ore,—

Q. Maintenance charges have nothing to do with the cost for conducting transportation.

A. I appreciate that.

Q. They have nothing to do with the movement. Therefore, that 28¼ cents a ton does not include anything but the movement.

A. That is the way this report reads; yes, sir.

Q. Then you must add to the 28¼ cents not only interest upon the investment, but you must add maintenance charges in order to arrive at the actual advantage, if any, possessed by the Steel Corporation over its competitors, by reason of its ownership of this road?

A. Yes. I guess that is right.

Q. And that makes quite a little difference?

A. Yes; I guess it does. Not a whole lot, at that, though.

Q. Well, how much?

A. I have not estimated that; but, taking the ratio of operating expenses of the Bessemer & Lake Erie, 42 per cent. is a pretty lovely profit to take care of those things, those extras, over operating expenses.

Q. Will you kindly tell how much it is?

A. I cannot tell you.

Q. How much is it?

A. I do not know.

Q. You do not know, do you?

A. No, sir.

Q. Where do you get that 28¼ cents?

A. I had a special accountant work it up for me.
Q. You did?
A. Yes.
Q. Who was he?
A. Jean Paul Muller of Washington.
Q. What is his business?
A. Accountant and attorney-at-law—expert accountant.
Q. That is a lawyer's conclusion, is it?
A. That is his expert report; yes, sir.

MR. SEVERANCE: In view of the fact that this testimony is now shown to be entirely founded upon hearsay, worked up by somebody else, I move that all testimony of the witness with reference to the alleged advantage possessed by the Steel Corporation through the ownership of the Bessemer & Lake Erie on ore movements be stricken from the record. Is there any objection to that?

MR. CORNEAU: We might as well state at this time that we expect to supplement this testimony with the proof of the figures themselves by the man who made them.

MR. SEVERANCE: Do I understand correctly that you object to striking the statement from the record?

MR. CORNEAU: I certainly do.

MR. BOLLING: Then it ought to be offered on the condition that you connect it up.

MR. CORNEAU: No, we will not make any condition at this time. You can make the motion to the Court at the proper time and argue it then.

MR. BOLLING: This testimony has no right to be lugged in without even a promise of any kind on your part to connect it.

MR. CORNEAU: I thought you asked me if I would not agree that it should go out.

MR. SEVERANCE: No; Mr. Bolling asked you if you would agree that if you do not supplement it, that then it will go out.

MR. CORNEAU: No; if we do not supplement it, there will still be a question to be argued to the Court.

By Mr. Severance:

Q. Now, will you kindly repeat for me what this cost of 28¼ cents covers, from what point to what point?

A. Conneaut Harbor, Ohio, to North Bessemer, Pennsylvania.

Q. Mr. Kennedy, you testified before the Interstate Commerce Commission, did you not, in this case that you have mentioned, the ore rate case?

A. Yes, sir.

Q. You testified there upon the same subject—the cost of the movement to the Bessemer & Lake Erie, did you not?

A. Yes, sir.

Q. You testified there, not to 28¼ cents, but you testified that it was only 26 cents, did you not?

A. Yes, sir.

Q. You testified there that the movement did not stop at North Bessemer, but continued down over the rails of the Union to the furnaces, did you not?

A. No, sir; I did not. See if you do not find that modified.

Q. You have stated now that the movement included the movement from Conneaut Harbor to North Bessemer. How far is North Bessemer from the furnaces?

A. Eight miles.

Q. And that is the point of junction between the Union and the Bessemer & Lake Erie?

A. That is the destination of the ore, yes.

Q. And the ore is taken from the Bessemer & Lake Erie at this junction point, North Bessemer, and taken by the Union Railroad and delivered at the furnace, is it not?

A. Yes, sir.

Q. And it is the cost of moving the ore from Conneaut Harbor to North Bessemer that you now say, based upon the figures made by your friend in Washington, is 28¼ cents?

A. Yes, sir.

Q. And you testified to 26 cents in that ore rate case?

A. Yes.

Q. And you say now, do you, that that 26 cents that you

testified to referred to the same service, from Conneaut Harbor to North Bessemer, and no more?

A. To North Bessemer, and no more.

Q. Let me ask you if you gave the following testimony in that case. I will call your attention to the testimony at page 279 of the record in that case.

MR. CORNEAU: Have you the record?

MR. SEVERANCE: I have the quotation from it.

MR. CORNEAU: But you have not the record?

MR. SEVERANCE: It is not here. I have seen it.

By MR. SEVERANCE:

Q. (Reading:)

"MR. BROWN: Now, did you understand that that figure of 26 cents included the cost of any service performed by the Union Railroad?

"Mr. Kennedy: I did; yes, sir.

"Mr. Brown: You understood it to cover it all?

"Mr. Kennedy: Yes, sir.

"Mr. Brown: Does the Union Railroad report separately to the I. C. C., or do you know?

"Mr. Kennedy: I believe they do; yes, sir.

"Mr. Brown: Well, would the cost to the Union Railroad then be included in the reports of the B. & L. E. Railroad?

"Mr. Kennedy: I am not so sure but that the B. & L. E. Railroad perform the service with their own power right to the furnaces.

"Mr. Brown: You understand, then, that the B. & L. E. R. R. operate over the tracks of the Union R. R.?

"Mr. Kennedy: Yes, sir.

"Mr. Brown: And perform this service themselves?

"Mr. Kennedy: I do not say they perform all this service themselves. I understand they perform the service of bringing the ore down and placing it in position to be placed.

"Mr. Brown: Delivering it at the plants?

"Mr. Kennedy: Except placing at the plants in the plants.

"Mr. Brown: Are you sure about that, Mr. Kennedy?

"Mr. Kennedy: Well, from personal observation I should say I was; yes, sir.

"Mr. Brown: So you are willing to say that this cost figure of 26 cents includes cost of any service performed by the Union R. R.?

"Mr. Kennedy: Not any service performed by the Union R. R.

"Mr. Brown: Well, that is a little too broad, I admit. Any service performed by the Union R. R. in making deliveries of the ore to a plant which is reached by the U. R. R.?

"Mr. Kennedy: I do not say it includes the cost to the Union Railroad in placing ore at tipples, or anything of that sort, or unloading machinery, where there is additional power necessary, but my experience is they bring ore over the Bessemer, the same crews, and place it in position for the plant facility to get hold of. The Union Railroad puts it where it is needed in the works.

"Mr. Brown: What are the investigations you made on that subject?

"Mr. Kennedy: I have been over the line myself and through the yards without getting arrested."

Do you remember that?

A. You bet.

Q. (Continuing) "Mr. Brown: Do you think that going over the line and through the yards without getting arrested enables you to testify affirmatively to this statement about the cost?

"Mr. Kennedy: In connection with what I have heard otherwise; yes, sir.

"Mr. Brown: Where do you understand the traffic is to be delivered on the Union Railroad by the power of the Bessemer & Lake Erie?

"Mr. Kennedy: Ore from Conneaut Harbor intended for the Duquesne Works would be taken directly to the Duquesne Works yards. Ore for the Edgar Thompson, which is right in the general yards of the Union Railroad, would be taken directly there.

"Mr. Brown: Now, you mean by taken direct there, taken by the power of the Bessemer & Lake Erie?

"Mr. Kennedy: Yes, sir.

"Mr. Brown: And delivered at those plants?

"Mr. Kennedy: Delivered at what we call—I should call a constructive placement at those plants.

"Mr. Brown: Then, does the Union Railroad perform the service?

"Mr. Kennedy: The Union Railroad performs the service which is necessary at their plant of placing the car wherever it is desired at a specified time."

Now, did you give that testimony?

A. Yes.

Q. It was not true, was it?

A. Yes, sir.

Q. It was?

A. Yes, sir. North Bessemer is a constructive delivery for all that ore. It is consigned to North Bessemer, care of the Union Railroad. The movement beyond there is a plant movement, on account of the way it is consigned.

Q. Let us see if that is the way you testified. You have just testified that you formerly testified as follows:

"Ore from Conneaut Harbor intended for the Duquesne Works would be taken directly to the Duquesne Works yard. Ore for the Edgar Thompson, which is right in the general yards of the Union Railroad, would be taken directly there."

"Mr. Brown: Now, you mean by taken direct, being taken by the power of the Bessemer & Lake Erie?

"Mr. Kennedy: Yes, sir.

"Mr. Brown: And delivered at those plants?

"Mr. Kennedy: Delivered at what we call—I should call a constructive placement at those plants."

That is what you swore to?

A. I base that on the fact that their motive power hauled the cars, and I saw them.

Q. Do I understand you correctly to now testify that this cost of 28½ cents, formerly stated as 26 cents, involved placing the cars at the Duquesne yards or at the Edgar Thompson yards by the Bessemer & Lake Erie?

A. It only involves—

Q. Do you swear to that?

A. It only involves placing the cars at North Bessemer, or the constructive delivery, the same as any other concern takes ore from the trunk line and performs a service in—

Q. You are talking about one thing and I am talking about another. There is no such thing as a constructive delivery where it is delivered from one line to another, if we treat the Union as an independent line, which we are doing for the purpose of distributing costs.

A. It is known as a constructive—

Q. Wait a minute. I am supposed to be asking the questions, and I want you to answer them. In the ore rate case, where you were trying to get your rates reduced, you swore that this cost of 26 cents included the cost of the Bessemer & Lake Erie hauling that ore from Conneaut Harbor to the Duquesne yards and to the Edgar Thompson yards. That is what you swore to, is it not?

A. With the modifications I mentioned.

Q. I just read it to you, did I not?

A. I say, with the modifications in the record.

Q. That is not true, is it?

A. With those modifications; yes, sir.

Q. No. Do you still say that 26 cents, or call it 28¼ cents now, includes the cost of transporting that ore from Conneaut Harbor to the Duquesne yards or the Edgar Thompson yards?

A. It includes the cost of service to North Bessemer.

Q. Answer my question. Does it include the cost of moving that ore from Conneaut Harbor to the Duquesne yards or the Edgar Thompson yards? Answer that question yes or no.

A. This report shows that it only includes the Bessemer haul—

Q. I want you to answer my question squarely. I am not asking you to look at a report and tell me what that report shows. I am asking you about your own testimony that you gave before the Interstate Commerce Commission.

MR. CORNEAU: No. You are now talking about this 28¼ cent rate.

By MR. SEVERANCE:

Q. You testified before the Interstate Commerce Commission, Mr. Kennedy, that 26 cents covered the cost of moving the ore from Conneaut Harbor to the yards of the Edgar Thompson Works or to the Duquesne yards. Do you still say that? Answer that question yes or no.

MR. CORNEAU: That is not quite a fair statement of his answer, Mr. Severance.

MR. SEVERANCE: Yes, it is. That is exactly what he said.

MR. CORNEAU: I do not think so.

MR. SEVERANCE: He said it over and over again. I read it to him.

MR. CORNEAU: He said it had been transported with the motive power of the Union Railroad.

MR. BOLLING: He said they performed their service with their own power right to the furnaces.

MR. CORNEAU: What furnaces are you talking about?

MR. BOLLING: The Edgar Thompson and the Duquesne.

MR. SEVERANCE: He swore to that, and he knows it.

MR. DICKINSON: I object to that kind of a statement, that the witness knows it. It is an effort to intimidate the witness.

MR. SEVERANCE: You do not know this witness. You cannot intimidate this witness.

THE WITNESS: Thank you. I am much obliged.

MR. DICKINSON: I never saw the witness before, but I do not think it is proper for counsel to make such a remark, and I except to it. I regard it as an improper observation on the part of counsel, and I desire my objection noted on the record.

By MR. SEVERANCE:

Q. Mr. Kennedy, you stated what I have just read to you, namely, that the movement covered by the 26 cent cost included the movement from Conneaut Harbor, when intended for the Duquesne Works yard and for the Edgar Thompson yard, right into the general yards of the Union Railroad. Do you still adhere to that statement, or do you now say that the 26 cent rate should be 28¼ cents, and that the movement covered by that is only to North Bessemer?

A. To North Bessemer; yes, sir.

Q. Have you taken the trouble to inform the Interstate Commerce Commission that you made a mistake in your testimony?

A. Not as yet; no, sir.

Q. You will do that, will you?

A. It would not be any trouble to do it, of course.

Q. Your case has not yet been decided, has it?

A. No, sir.

Q. It has not yet been argued?

A. No, sir.

Q. It is still open?

A. Yes, sir.

Q. Your testimony has been closed, has it not?

A. Not entirely.

Q. As I understand you, there is no ore whatever consumed by any furnaces in this district, outside of those of the Steel Corporation, that moves over the Bessemer & Lake Erie?

A. That is true; yes, sir.

Q. So that they do not get any high freight rate on your ore, or on anybody else's ore?

A. No, sir.

Q. Whatever they charge above what you think is a fair rate, they pay themselves; that is, one subsidiary pays another subsidiary?

A. I imagine that is so; yes, sir.

Q. And it is immaterial to the outside steel manufacturers how that rate is divided as between the Bessemer & Lake Erie and the Union, is it not?

A. It is immaterial; yes.

Q. That makes no difference?

A. No, sir.

Q. You do not know how much the Union Railroad properties cost, do you?

A. No, sir.

Q. You do not know how much the Bessemer & Lake Erie cost?

A. No, sir.

Q. You stated, in answer to counsel, that the Corporation had in the Valleys a furnace capacity of about 40 per cent. of the total, I believe you said?

A. That is my understanding; yes, sir.

Q. About 40 per cent., as against 60 per cent. to the outsiders?

A. Those are rough figures; yes, sir.

Q. Is it not a fact, sir, that last year the ore tonnage to the Corporation works, as follows, the Ohio works at Youngstown, the New Castle works, North Sharon, South Sharon, Niles furnace—those are the Valley plants of the Steel Corporation?

A. Yes.

Q. (Continuing) Amounted to 3,972,000 tons; while the tonnage to the Youngstown Sheet & Tube Company and the Republic Iron & Steel Company, the competitors in the Valleys, amounted to 2,239,000 tons annually?

A. I cannot answer that.

MR. CORNEAU: Do I understand you to state that those two are the only competitors in the Valleys, Mr. Severance?

MR. SEVERANCE: Those are their largest competitors.

By MR. SEVERANCE:

Q. Those are their largest competitors, are they not?

A. Yes, sir; the largest ones.

Q. Where did you get your information that 3,972,000 was only 40 per cent.?

A. I did not give those figures.

MR. CORNEAU: He has not said he had any information about that. This is tonnage, and he was talking about capacity.

By MR. SEVERANCE:

Q. What roads did you make your complaint against with reference to the rate on ore from the lower lake ports to Pittsburgh?

A. The Lake Shore, the P. & L. E. and the Pennsylvania lines.

Q. Those lines are not affiliated by ownership with the Bessemer & Lake Erie, are they?

A. I could not tell you that.

Q. You do not know that they are, do you?

A. No, sir; I do not.

Q. How many years has that 96 cent rate been in force?

A. Since 1909.

Q. What was the rate previous to that time?

A. $1.14.

Q. How many years had the $1.14 rate been in force?

A. I could not state exactly, but on April 6, 1907, that rate took effect; and on August 2, 1909, it was reduced to 96 cents.

Q. What was the rate before the $1.14 rate?

A. I cannot remember.

Q. Can you not tell us about what it was?

A. I have not the data.

Q. Was it higher or lower than the 96 cent rate?

A. I think it was higher.

Q. It was higher still?

A. I think so.

Q. Has there at any time been a lower rate than the 96 cent rate?

A. Not to the Pittsburgh district; no, sir.

Q. How far back did you conduct your investigation on that question?

A. Back to 1907.

Q. Have you never looked back in the old days, in the 90's?

A. I did not see the necessity for doing it.

Q. Did you do it?

A. No, sir.

Q. Do you know anything about what the rates were? Have you ever been told?

A. Yes; I have read the testimony given by Mr. Orr. He gave all the rates since 1883.

Q. What were the rates, we will say, in the late 90's?

A. I cannot guess.

Q. Were they higher or lower than the present rates? You must remember that.

A. I would not like to say.

MR. CORNEAU: You want some hearsay, evidently, Mr. Severance.

MR. SEVERANCE: He has been giving nothing else all the time.

By MR. SEVERANCE:

Q. You have no knowledge as to what the ore rates were, or whether they have ever been lower than 96 cents?

A. I do not think they have, no, sir, to the Pittsburgh district.

Q. The 96 cent rate is not a rate that has been put up to that point since the organization of the Steel Corporation?

A. No, sir.

Q. So that, if there is any difference in the rate now and the rate obtaining previous to the organization of the United States Steel Corporation, the rate is now lower than it was before?

A. Yes; and the last reduction, I believe, was due to the question of docks; it was due to a change in dockage arrangements, which did not affect the rate any.

Q. You said, in answer to counsel, that you could not conceive of any reason why the Pittsburgh rates on ore should be higher than the rates to these other districts.

A. Yes.

Q. Are you sure that you never had any explanation of that from railroad men?

MR. CORNEAU: He did not say that he had never had any explanation from them.

MR. SEVERANCE: He said he could conceive of no reason.

THE WITNESS: Of no legal reason, no.

By MR. SEVERANCE:

Q. Oh, no legal reason?

A. Yes.

Q. It is a question of law you are deciding, then?

A. Yes.

Q. Is it not a fact that you have been informed by railroad men that the reason that the ore rates are higher here is

that the coal rates into the Pittsburgh furnaces are lower than they are into these other districts?

A. I have heard that statement.

Q. And the limestone rates are lower, and that the rates all through this country that is producing pig iron have been, by the trunk lines, adjusted on a basis through which they have endeavored to equalize the cost of assembling the raw materials at the furnaces?

A. I will answer that by saying that any explanation of that kind that I have heard is all hearsay.

Q. I ask whether that explanation is the one that has been given by the carriers.

MR. CORNEAU: That is objected to as incompetent, irrelevant and immaterial.

THE WITNESS: They have not given any.

By MR. SEVERANCE:

Q. They have testified to that?

A. In a very small way; yes.

Q. They testified to it in your ore rate case, did they not?

A. They tried to, yes.

Q. Well, they tried to.

A. They have not finished yet.

Q. As far as their effort went they were successful, were they not, in giving the testimony? I do not attempt to say anything about the effect of it. I do not know anything about that. They, at least, succeeded in getting that out of their system and into the record, did they not?

A. Yes; if that is what you want.

Q. Then it was not quite accurate, was it, for you to say that you could conceive of no reason, if that reason had been given by the trunk lines?

A. That is not my reason.

Q. Oh. That is not your reason?

A. No.

Q. What is the rate on coal from the mines to the furnaces in the Pittsburgh district?

A. I do not know.

Q. What is the rate on coal from the mines to the furnaces in the Youngstown district?

A. I do not know.

Q. Have you any data in front of you by which you can state?

A. No, sir.

Q. You have never looked that up?

A. I never had any occasion to look it up.

Q. Did you not tell us that you used to be a rate clerk with the Lake Shore?

A. That never affected coal rates within the Pittsburgh district, or any other district, at that time.

Q. What particular part of the rates did you make when you were rate clerk?

A. The coal was all handled by the Pittsburgh & Lake Erie general—

Q. What particular part of the rates did you construct when you were a rate clerk?

A. I did not construct any. I simply used the tariffs that were published.

Q. You had nothing to do with the making of rates, then?

A. No, sir; nothing whatever.

Q. You do not remember anything about those coal rates?

A. No, sir.

Q. You never regarded that as of sufficient importance in connection with the ore rate case to look it up?

A. It did not enter into the ore rate case at all, as we saw it.

Q. You did not regard it as sufficiently important to justify your taking the time to look it up?

A. No, sir.

Q. So that you do not know what the coal rate is into the Youngstown district nor into these other districts?

A. No, sir.

Q. Or the Wheeling district?

A. No, sir.

Q. Do you know, as a matter of fact, whether the rates on coal are higher to the Youngstown district than to the Pittsburgh district?

A. I never looked it up.

Q. That is not what I asked. Do you know?

A. No, sir; I do not.

Q. You have no knowledge on the subject?

A. No, sir.

Q. So far as you know, the rates on coal from these mines around Pittsburgh up to the Youngstown district may be lower than the rates into Pittsburgh?

A. They may be; yes, sir.

Q. You would not know anything about that?

A. No, sir.

Q. And as a traffic man, you would regard that as all right, would you not?

A. No, sir; I would not.

Q. You would think that the rates ought to be higher on coal to the Youngstown district and these other districts than to the Pittsburgh district?

A. Naturally, yes.

MR. CORNEAU: Will you let him state why, if you do not mind, Mr. Severance?

By MR. SEVERANCE:

Q. It is on account of the distance, is it not?

A. On account of the distance, yes, sir.

Q. Do you know anything about any other railroad handling iron ore in the Lake Superior district in Minnesota except the Great Northern, the Duluth, Missabe & Northern and the Duluth & Iron Range?

A. No, sir.

Q. You have never heard of the Soo doing that work?

A. From Minnesota?

Q. Yes.

A. The Soo Line?

Q. The Soo Line, yes.

A. No.

Q. You are not aware of the fact that the Soo Line reaches the Cuyuna Range, the new range west of the Mesabi?

A. No, sir.

Q. How did it happen that you did not look that up on your visits up there?

A. I could not cover it all during the time I took.

MR. CORNEAU: He said he was not aware of it.

MR. SEVERANCE: Well, he is an all-around railroad expert.

MR. CORNEAU: Oh, no; he has not said any such thing.

By MR. SEVERANCE:

Q. You are not aware of the fact that they have built large ore docks at Superior in connection with the movement of that ore?

A. I knew they were building some, yes.

Q. You did know that?

A. Yes.

Q. What did you think they were going to use them for?

A. I did not know.

Q. Did you think they built them just to look at?

A. To invest their money, I suppose.

Q. The Soo Railroad is one of the lines down in Wisconsin of which you have spoken?

A. Yes.

Q. And they got a 40 cent rate, I think you said, for how long a haul—an average of 58 miles?

A. I think it was 58 miles, yes.

Q. Give me the detail of that, to make up that average of 58 miles.

A. From Bessemer, Michigan, and from Ironwood, Michigan.

Q. What is the distance?

A. I have not got the separated distances; just the average of the two, the total, in one figure.

Q. How far apart are they?

A. They are pretty close together.

Q. How far apart?

A. I imagine five or six miles, or in that neighborhood.

Q. You have been there, have you not?

A. Yes, sir.

Q. Those are the only two points from which they take ore?

A. They are not the only two points. Those are the only two that I have been at.

Q. What are the others?

A. Those are the only two that I have been at, from which they publish the 40 cent rate.

Q. Have they any other mines from which they publish the 40 cent rate except those two points?

A. They may have.

Q. You do not know?

A. I do not.

Q. Why did you not look it up?

A. I do not know.

Q. How did you happen to pick out these two?

A. They looked like the largest.

Q. Then you did see others, did you?

A. These looked like the largest, on paper, from a tonnage-producing standpoint.

Q. I understand, then, that you did know that there were other mines on the Soo beside those two?

A. I did not.

Q. How could they look the largest, if there were no others to compare them with?

A. They looked the largest in that district, those two mines. I do not know whether they were on the Soo or not.

Q. How could they look the largest, if you did not compare them with anything else?

A. As a matter of fact, they are the largest, are they not?

Q. What are the mines that you say are smaller?

A. I could not tell you right now, off hand.

Q. How far out of Ashland are the other mines?

A. They are in the vicinity of these mines.

Q. How far out of Ashland?

A. I could not answer that.

Q. You know nothing about the average distance into Ashland from those mines?

A. I did not say I saw all the mines.

Q. You did testify to that distance yesterday?

A. I did not.

Q. Then I understand that all your distance table into Ashland meant was this, that you picked out two points out on the Soo Road, and you have averaged the distance from those two points into Ashland, and have given us the benefit of that deduction. That is all?

A. That is right.

Q. And as to whether they have shorter hauls from other mines for which they receive 40 cents, you know nothing about?

A. No, sir.

Q. What about the North Western Line? What points did you take in making up that estimated distance?

A. Iron River and Crystal Falls, Michigan.

Q. How far are they from Escanaba?

A. Seventy miles.

Q. Each the same?

A. They average 70 miles. I have not got it down separately.

Q. On which ranges are these mines from which the ore moves to Escanaba?

A. They are on the Menominee Range.

Q. And the ore moving to Ashland is on what range?

A. I do not remember the names of the ranges and the placement of them, in my head, and I have not the knowledge here before me.

Q. Is it the Gogebic?

A. I would not swear as to that.

Q. You do not know what range it is?

A. No, sir.

Q. Do you know how near to Ashland the nearest mine is from which ore shipments are made?

A. No, sir.

Q. Do you know how near to Escanaba the nearest mine is from which ore shipments are made?

A. Not the nearest ones, no, sir.

Q. Or the farthest?

A. No, sir.

Q. In either case?

A. It would be very nearly impossible to get that information.

Q. There is a good deal of local movement of ore into Ashland, is there not, that does not come down the Lakes?

A. I believe that is right, yes, sir.

Q. Does that move on the same rate?

A. I do not know.

Q. You did not look that up?

A. No, sir.

Q. There are furnaces there at Ashland, are there not?

A. Yes, sir.

Q. Ore is consumed at those furnaces?

A. Yes, sir.

Q. You do not know what the rate is to those furnaces, whether it is the same as the lower lake ore?

A. No, sir.

Q. You testified yesterday, in answer to counsel, that the rate from the Minnesota ranges had been 80 cents until a year ago, or until last November, when it was reduced?

A. Yes, sir.

Q. Which roads first announced that reduction, if you know?

A. My knowledge is that the D. M. & N. and the D. & I. R. made the first announcement

Q You did not hear that the Great Northern or the Soo reduced their rates up there before the Steel roads?

A. I did not.

MR. CORNEAU: What was the date of that announcement? Did we get that yesterday?

MR. SEVERANCE: He said November, 1911.

THE WITNESS: November 30, 1911, was the effective date.

MR. CORNEAU: The bill was filed the 26th of October, I believe.

By MR. SEVERANCE:

Q. You stated yesterday the average distance to the Youngstown district from the lake ports was 66.9 miles by the short line, did you not?

A. Yes, sir.

Q. What is the shortest haul on that short line included in the 56 cent rate?

A. The shortest haul?

Q. Yes.

A. Fifty-four miles.

Q. Then they get a little over a cent a ton a mile on that?

A. That is the way it figures up, yes.

Q. What point is that?

A. Girard, Ohio.

Q. What is the next nearest?

A. Niles. It is the lowest—no, it is not.

Q. What is the mileage to Niles?

A. Forty-nine miles.

Q. Has the Steel Corporation a furnace at Niles?

A. No, sir.

Q. They have no interest at Niles?

A. Not to my knowledge, they have no interest at Niles.

Q. What is the next nearest?

A. Warren. Warren is the nearest, by the way.

Q. What is the distance?

A. Forty-four miles.

Q. And the 56 cent rate applies, does it?

A. Yes, sir.

Q. How far is Youngstown?

A. Fifty-nine miles.

Q. Then you get almost a cent a ton a mile up to Youngstown?

A. Yes, sir.

Q. Youngstown, then, is eight miles nearer than the average, which is 66.9?

A. Seven miles, practically.

Q. Well, about eight miles nearer. Is it not a fact that Youngstown is the point of largest consumption in that district?

A. Youngstown, Struthers, Haselton and Brier Hill are right together, within a few miles.

Q. Then this 66.9 average haul is not an average of the tonnage haul, is it?

A. Weighted distance, no.

Q. You would say, then, that the bulk of that ore is hauled not over 59 miles, at the outside?

A. I would not say that, no.

Q. Do not Youngstown, and those other places you have mentioned—Warren, Girard and Niles—altogether consume more than half?

A. Struthers is quite a point, and Haselton.

Q. How many miles is Struthers distant?

A. I believe the Youngstown Sheet & Tube are there, and the Republic Iron & Steel——

Q. I say, how far is it; what is the haul?

A. Sixty-four miles.

Q. At any rate, you would say that the very large majority of that ore is hauled much less than 66.9 miles, would you not?

A. No, I would not say that.

Q. You think a majority of it is hauled that far, or farther?

A. At least half of it.

MR. CORNEAU: Are you talking now of all the ore in the district or from these short line points?

MR. SEVERANCE: He stated yesterday the average distance to the district was 66.9 miles. I am trying to find out whether that is the average haul of the actual commodity.

MR. CORNEAU: That is what I am trying to get at. He gave, as I understand it, the average distance from the nearest port to each furnace point, so that he got the average of the shortest lines; but I do not understand that all the ore goes into the Youngstown district from the nearest port. For instance, I judge that ore comes in from Cleveland, Lorain, Ashtabula, Erie and other places.

MR. SEVERANCE: He testified to the average distance computed.

MR. CORNEAU: The average short line distance.

MR. SEVERANCE: From the port to the various places. I am trying to get at whether 66.9 miles is not a greater distance than the average of the ore actually hauled.

MR. CORNEAU: I see.

By Mr. Severance:

Q. Have you any figures from which you can give an opinion?

A. No, sir.

Q. You do not know that?

A. No, sir.

Q. The distance you stated to Aliquippa is 105 miles?

A. Yes.

Q. And the rate is 78 cents?

A. Yes, sir.

Q. Whose plants are located there?

A. The plants of the Jones & Laughlin Steel Company.

Q. On what line is that?

A. The Pittsburgh & Lake Erie.

Q. Is it on any other line?

A. No, sir; no other trunk line.

Q. That is what I mean. It is not on any other trunk line?

A. No.

Q. How far is it from Pittsburgh, in a direct line?

A. Eighteen miles.

Q. Down the river?

A. Yes, sir.

Q. I notice from your testimony yesterday that there seems to be a blanket rate of 90 cents on ore to Ironton, Ashland and Cincinnati from the lake ports.

A. A blanket rate?

Q. Blanketed at 90 cents to those three places; just the same. There is no difference?

A. No, sir; there is no difference.

Q. That is what I mean by "blanketed," that there is the same rate to all the places. You pass through some on the way to the others, do you not?

A. You pass through Ironton to go to Ashland; yes, sir.

Q. That is what I thought.

A. Yes. There is a difference of four miles in distance between the two towns; across the river.

Q. And Cincinnati is 289 miles; that is 20 miles farther?

A. Yes.

Q. You do not know anything about the cost of getting coal to any of these places, as I understand?

A. The cost of getting coal to those places?

Q. Yes.

A. No, sir.

Q. You were speaking about the advantage to the Steel Corporation growing out of the possession of this railroad, the Bessemer & Lake Erie. The other manufacturers in this district, who manufacture pig iron, get what is called a terminal or furnace allowance, do they not, from the railroads?

A. Yes, sir; if they have a terminal line.

Q. Where they have terminal lines, they get such an allowance?

A. Yes, sir.

Q. Does that apply on anything except iron, limestone and coke destined to pig iron furnaces?

A. You mean iron ore?

Q. Iron ore, coke and limestone.

A. That is all it applies to, except as regards the Monongahela Connecting Railroad and the Union Railroad.

Q. The Union Railroad is rather different in its size and the kind of work it does from the tracks you have, for instance, around the Pittsburgh Steel Company's plant?

A. Somewhat larger, yes.

Q. You testified, did you not, before Commissioner Harlan, when he was taking testimony in this building in connection with the terminal allowances?

A. Yes.

Q. You testified that you did not think that your company was entitled to any terminal allowance, did you not?

A. I did not say it was not entitled to any, but that it did not want it, and would not take it if it was offered it.

Q. You said you could not figure out what it ought to be?

A. That is what I did say; yes, I said that.

Q. You said you did not ask for it, did you not?

A. I said you could not divide up the expense of the terminal lines, placing the proper amount to the manufacturing and the proper amount to the railroad.

Q. Well, you said that you did not want any furnace allowance?

A. Yes, sir.

Q. Did you not testify before the Interstate Commerce Commission, another member of the Commission, Mr. Meyer, in the rate case, that you tried to get it, that you had been rendering bills to the trunk lines trying to get a terminal allowance, and they would not give it to you?

A. I testified that I sent one bill to W. A. Terry, General Freight Agent of the P. & L. E., for $600, which was declined. That was not the general action of the company—seeking terminal allowances.

Q. Did you not say you went further and sent others, and they had all been declined?

A. I did not, sir; no.

(Thereupon, a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

A. R. KENNEDY,

the witness under examination at the taking of recess, resumed the stand for further

CROSS EXAMINATION (Continued).

MR. SEVERANCE: I will ask the stenographer to repeat the last few questions and answers.

(The stenographer read the last two questions and answers as hereinbefore recorded.)

By MR. SEVERANCE:

Q. Did you not testify to that in substance at the hearing on terminal rates before Commissioner Harlan?

A. I did, yes, sir.

Q. I will ask you if you gave the following testimony before Commissioner Harlan.

"MR. GANN: Has application been made to any trunk line for an allowance?

"MR. KENNEDY: Yes, sir.

"MR. GANN: What line, and when?

"MR. KENNEDY: To the Pittsburgh & Lake Erie within the last three years on inbound ore shipments. That was done in writing, in the way of a claim to the general freight department of the Pittsburgh & Lake Erie, and declined on each occasion. I have made verbal application for allowances on limestone, coke and——

"MR. GANN: To whom?

"MR. KENNEDY: To the same official, and was met with a declination each time."

Did you so testify?

A. I did.

Q. Why, then, do you now say, as you have just testified, that you only made one claim, and that was a claim of $600?

A. That is all we did make. It covered all the movements we had into plants during those three years. Another reason——

Q. You did make repeated application and tried to get this allowance, and it was declined——

A. And we expected it would be, because we did not have a blast furnace.

Q. Never mind that. Have you a large ore tonnage in the Pittsburgh Steel Company?

A. Not at the present time, no, sir.

Q. You have no blast furnaces, have you?

A. Not in operation, as yet.

Q. You have never operated one, have you?

A. No, sir.

Q. The ore that you have used has been in connection with open-hearth work?

A. Yes, sir.

Q. What is the extent of your ore tonnage?

A. Has been or will be?

Q. Has been. Give it in round numbers?
A. Approximately 20,000 tons a year.

MR. CORNEAU: I object to this line of testimony as not proper cross examination and as immaterial and incompetent.

By MR. SEVERANCE:
Q. What is the capacity in tons of the Pittsburgh Steel Company?

MR. CORNEAU: Objected to as incompetent, irrelevant and immaterial, and not cross examination.
A. What tonnage do you wish?

By MR. SEVERANCE:
Q. Your output.
A. Is that for the purpose of this case or for some other purpose?

MR. SEVERANCE: Read the question.

(The stenographer repeated the question as above recorded.)

MR. SEVERANCE: Your output.
THE WITNESS: As an approximation, about 400,000 gross tons a year.

By MR. SEVERANCE:
Q. How many years ago was the Pittsburgh Steel Company established?

MR. CORNEAU: Objected to as not proper cross examination, and as irrelevant, incompetent and immaterial.
MR. SEVERANCE: He testified he was their traffic manager and occupied that position for some time, and I wanted to find out how long it had been running.
MR. CORNEAU: That is wholly immaterial and not proper cross examination.

By MR. SEVERANCE:
Q. Go on and answer the question.
A. Since 1902.
Q. What was its capacity at first?

MR. CORNEAU: Objected to as incompetent, irrelevant and immaterial.

A. I do not know.

By MR. SEVERANCE:

Q. What was its capacity when you came there five years ago?

MR. CORNEAU: The same objection.

A. I cannot tell you.

By MR. SEVERANCE:

Q. Has it increased in the last five years?

MR. CORNEAU: The same objection.

A. I would not be surprised if it had.

By MR. SEVERANCE:

Q. Do you know?

MR. CORNEAU: Same objection.

A. Not sufficiently to swear to; no, sir.

By MR. SEVERANCE:

Q. You would not undertake to testify as to whether the output of the Pittsburgh Steel Company is greater to-day, or has been in the last five years, than it was during the first year that you were with them?

MR. CORNEAU: Objected to as incompetent, irrelevant and immaterial, and not proper cross examination.

A. I would not.

By MR. SEVERANCE:

Q. You do not know?

MR. CORNEAU: Same objection.

A. I would not know sufficiently to testify.

By MR. SEVERANCE:

Q. I say you do not know.

MR. CORNEAU: Same objection.

A. No, sir.

By MR. SEVERANCE:

Q. You do not know anything about it?

MR. CORNEAU: Same objection.

A. No, sir.

Q. Have you built any new buildings during that time?

A. I would not be surprised if we did.

Q. I am not asking you whether you would be surprised. I do not think anything would surprise you. But I am asking you as to the fact; have they built any new buildings?

MR. CORNEAU: Objected to, for the same reasons as already stated.

A. I think they have.

By MR. SEVERANCE:

Q. What are they?

A. I could not tell you. That is out of my line of business.

Q. You do not know anything about it?

MR. CORNEAU: Objected to as incompetent, immaterial, irrelevant, and not proper cross examination.

A. No, sir.

By MR. SEVERANCE:

Q. How do you know——

A. (Interrupting) It seems foolish to answer such questions.

Q. It seems foolish to ask them, perhaps, I do not know that it is of much use to ask any question on any ordinary subject coming under your own observation.

Will you state one building that they have built since you went to work with them?

MR. CORNEAU: The same objection.

A. A steel plant, I guess.

By MR. SEVERANCE:

Q. Furnaces in connection therewith?

MR. CORNEAU: The same objection.

A. Yes, sir.

By Mr. Severance:

Q. Open-hearth furnaces?

Mr. Corneau: The same objection.

A. Yes, sir.

By Mr. Severance:

Q. You are not surprised at that, are you?

A. No.

Q. How many open-hearth furnaces have they built since you went to work for them?

Mr. Corneau: The same objection.

A. I think there are eight.

By Mr. Severance:

Q. Was that a thing that you could not be sure about?

A. I did not come here to testify about that at all. That is out of my line entirely.

Q. Mr. Kennedy, you are not here to say as to what you will be interrogated about; you are here to answer questions that are put to you. A moment ago you testified you were not able to testify as to what enlargements had been made at that plant, and now you testify that eight open-hearth furnaces have been built.

A. In answer to your inquiries, yes.

Q. And both those answers are correct, are they?

A. Yes.

Q. You must have known about the eight open-hearth furnaces when I first asked you about any improvements or enlargements, did you not, three minutes ago?

Mr. Corneau: Objected to as not proper cross examination.

A. Yes, I guess I did.

By Mr. Severance:

Q. Did you not know that then?

A. Yes, I guess I did.

Q. We have gotten that far. You do know that they built eight open-hearth furnaces?

A. Yes, sir.

Q. What else have they built?

A. I do not know.

Q. Have they built any finishing mills?

A. No.

Q. No finishing mills at all?

A. Not the Pittsburgh Steel Company, no.

Q. Have they built any rolling mills during that period?

A. I believe they built one rod mill.

Q. Why did you say a moment ago that you did not know?

A. I believe they have.

Q. You believe so?

A. Yes; I am not altogether certain of it.

Q. Do you ever go to the plant?

A. Yes.

Q. Where is your office?

A. In Pittsburgh.

Q. Where is the plant?

A. At Monessen.

Q. How far away is that?

A. About 40 miles.

Q. How often do you go there?

A. Whenever I can spare the time.

Q. How often is that? I do not know how busy you are.

A. I guess that is true. I would say once a month or once every two months.

Q. And you have been doing that during the last five years?

MR. CORNEAU: Same objection.

A. Not regularly.

By MR. SEVERANCE:

Q. But on an average?

MR. CORNEAU: Same objection.

A. I would not say on an average.

By Mr. Severance:

Q. How often have you been on an average?

A. I can't see that that affects the case in any way.

Mr. Bolling: Mr. Severance, I would take this witness to Philadelphia if he refuses to answer, as we have no power to compel him to do so, and the Commissioner or Examiner has no such power.

Mr. Severance: I think I will get it out of him after a while. It will not look any better for him, the way his testimony will appear on the record.

Mr. Corneau: I think counsel is trying to elicit confidential information concerning his company which has nothing to do with the case.

Mr. Severance: You did not seem to regard the testimony that you elicited from other witnesses as confidential. For instance, you asked Mr. King all about Jones & Laughlin and other plants.

By Mr. Severance:

Q. I have asked you to state on an average how often you visited the plant at Monessen.

A. I could not tell you how often.

Mr. Corneau: Objected to as not proper cross examination.

By Mr. Severance:

Q. Several times a year, have you not?

A. I would say several times a year, yes.

Q. Have these new buildings been under construction at the times when you went up there?

A. Some, yes.

Q. Having elicited from you the fact that you do remember eight open-hearth furnaces and a rod mill being constructed, are you able to tell any other new buildings or plants that have been built during five years?

A. No, sir.

Q. Think a moment, and perhaps you will think of some more.

Mr. Corneau: Same objection.

A. Not any more to my knowledge.

By Mr. Severance:

Q. That is final, is it?

A. Yes, sir.

Q. Now your business as traffic manager has to do with the rates and the handling of incoming and outgoing traffic, has it not?

A. Yes, sir.

Q. You say now that their tonnage is how many hundred thousand tons a year?

A. About 400,000 tons of steel ingots.

Q. Is that outbound?

A. Practically so.

Q. How much is it inbound?

A. I could not tell you.

Q. Is that immediately in your department?

A. I did not work it up, no, sir.

Q. That is a subject that you are immediately connected with?

A. Yes.

Q. Can you give us any estimate——

A. (Interrupting) I could not tell you, no.

Q. You could not tell whether it is a million tons or 500,000 tons or 250,000 tons?

A. I would not want to guess.

Q. You would not want to guess at something that is in your immediate charge?

Mr. Corneau: This is objected to as not proper cross examination.

A. No, sir.

Mr. Corneau: He did not say the shipments were in his immediate charge, but the matter of rates on shipments.

By Mr. Severance:

Q. The 400,000 tons you have testified about are outbound shipments?

A. Practically so; yes, sir.

Q. Do you think you would get in as much tonnage as you ship out?

A. I imagine more.

Q. I should think likely you would. Your tonnage is at least 800,000 tons, is it not?

A. I would not guess at it——

Q. You say that it would be that much, do you not——

A. I would not like to make any statement about it.

Q. You would be willing to say that you could estimate it to the extent of this; that your inbound must be as great as your outbound, if not greater?

A. Oh, yes; I would make that statement.

Q. How much was your outbound tonnage five years ago, when you first became connected with the company?

MR. CORNEAU: Objected to as immaterial, incompetent and not proper cross examination.

By MR. SEVERANCE:

Q. (Continuing) Give us your best judgment.

A. I haven't any idea.

MR. CORNEAU: The same objection.

By MR. SEVERANCE:

Q. You have no idea?

A. No, sir.

Q. About the amount of the tonnage that was in your charge, and that you were routing—did you mean that?

A. Yes.

MR. CORNEAU: I object to that. I wish you would give me an opportunity to object.

MR. SEVERANCE: I thought you had made your objection.

MR. CORNEAU: No. That is not warranted by anything that has been said, and I object to it.

By MR. SEVERANCE:

Q. Were you paid a salary there by that company?

A. A slight one; yes, sir.

Q. Five years ago, were you paid a salary?

MR. CORNEAU: Objected to as incompetent, improper and immaterial, and not proper cross examination.

By Mr. Severance:

Q. Were you paid a salary five years ago, at the time you were ignorant about what was going on?

A. I believe I was, a slight one, yes.

Q. When did you file your complaint against the ore rate?

A. In January this year.

Q. Had you ever filed a complaint with the Interstate Commerce Commission before?

A. On ore rates?

Q. Yes.

A. No, sir.

Q. What is the rate on coal into your plant?

A. I think it is about ten cents a ton, or in that neighborhood.

Q. Is that uniform from all sources of supply?

A. Not necessarily; no, sir.

Q. Between what figures does that run?

A. That depends on the distance.

Q. Well, I am asking you what is your lowest coal rate and what is your highest?

A. We endeavor all the time to get our coal from the lowest rate points. If we cannot get it there, we are compelled to pay the next rate.

Q. That is not what I am asking you. I ask you to tell me the minimum rate upon which you ship coal into the plant, and what is the maximum rate you pay on coal into the plant?

A. I would say the minimum would be about 10 cents and the maximum would be 50 cents a ton.

Q. You say that 10 cents is your minimum?

A. Yes, sir.

Q. You get nothing at less than 10 cents a ton?

A. No, sir.

Q. Does the bulk of your coal come in on that rate?

A. I would say a great portion of it does.

Q. What other incoming tonnage do you have—do you have pig iron?

A. Yes, sir.

Q. From what points do you ship your pig iron?

A. Various places. It depends altogether on where you buy it.

Q. That is a very general answer. Tell me what points there are from which you secure your pig iron?

A. The valleys, principally.

Q. Do you buy any in the Pittsburgh District?

A. Not to my knowledge; no, sir.

Q. What rate do you pay from the valleys to your plant on pig iron?

A. 90 cents a ton.

Q. That is the uniform rate from all places in the valleys, is it not?

A. Yes, sir.

Q. What other inbound tonnage do you have?

A. We have limestone and dolomite.

Q. Where do you get your limestone?

A. At the present time, you mean?

Q. Yes.

A. At Martinsburg, West Virginia.

Q. Where have you secured it at other times?

A. That is about the only place, I believe.

Q. What is your rate from Martinsburg, West Virginia?

A. 90 cents.

Q. What is the distance?

A. I cannot recall that distance.

Q. It is over 200 miles, is it not?

A. I would say it is; yes, sir.

Q. About 250 miles?

A. Close to that.

Q. 260 miles?

A. I do not believe so; no, sir.

Q. Where did you get your dolomite?

A. At the same place.

Q. What is the rate on that?

A. The same rate.

Q. Mr. Kennedy, do you know Mr. Orr?

A. Which Mr. Orr?

Q. Of the Pennsylvania Railroad.

A. Of the Pennsylvania Lines, you mean?

Q. Yes.
A. J. P. Orr?
Q. Yes.
A. Yes.
Q. He testified in your ore rate case, did he not?
A. I believe he did.
Q. You know he did, do you not?
A. Yes.
Q. You were present when he testified, were you not?
A. Yes, sir.
Q. I will ask you whether it is not a fact that at the hearing Mr. Orr gave the following testimony, and whether it is not also the fact that you or your company offered no testimony thereafter contradicting the same:

MR. CORNEAU: Before you read it, I might as well enter my objection. I object to it as incompetent, irrelevant and immaterial, improper cross examination, and as an improper way in which to get into this record what some witness said in some other record.

By MR. SEVERANCE:
Q. (Reading) "Mr. Orr: I have no knowledge of any conference for the purpose of considering these ore rates, or checking these ore rates, at which the Bessemer & Lake Erie Railroad, through Mr. Baird, their general freight agent, or through any of their executives, was either present or represented by any one else.

"Mr. Gordon: Did they ever take any part, to your knowledge, in the establishment of the rates?

"Mr. Orr: No, sir."

I will ask you whether it is not a fact that Mr. Orr gave that testimony, and that you, or the Pittsburgh Steel Company, thereafter offered no testimony contradicting the statement?

A. We have not had a chance, as yet. Mr. Orr is not through with the hearing.

By MR. SEVERANCE:
Q. Up to this date you have not offered any?

A. Not to this date; no sir. There has not been a chance. There has not been any hearing.

MR. CORNEAU: Can you give me a reference to the page to which you are referring, Mr. Severance?

MR. SEVERANCE: I have just got it on an abstract. I have not the page.

MR. CORNEAU: Very well.

By MR. SEVERANCE:

Q. Is your plant located along one of the rivers?

A. The Monongahela River, yes.

Q. Does your coal come in by rail or by boat?

A. It comes in by rail.

Q. Over what line?

A. The P. & L. E.

Q. Do they take it directly from the mines?

A. Yes, sir.

Q. The mines are located on their line?

A. Yes, sir.

Q. You spoke of the terminal railroad at Lorain.

A. Yes, sir.

Q. That is called the Lake Terminal, is it not?

A. Yes, sir.

Q. Have you been there?

A. Yes, sir.

Q. That starts from a point on the docks, along the river, comes up a hill and through a classification yard, and finally goes on over across the river to a connection with the Lake Shore or the Wheeling & Lake Erie, or goes back in the other direction in connection with the B. & O., does it not?

A. Yes, sir.

Q. And the haul on that ore is five or six miles, in the aggregate, is it not?

A. You mean, including all the switching and everything?

Q. I mean bringing it up and putting it through the yard, over the scales, and taking it to the connecting line.

A. I would not consider it that long; no, sir.

Q. You would not deny that if witnesses have testified to it, would you?

A. I would not deny it, no. I have been over the property itself.

MR. CORNEAU: Let me see if I understand your question, Mr. Severance. Are you asking for the length of the track itself, or the total movement over the track?

MR. SEVERANCE: The total movement.

MR. CORNEAU: I mean, if it goes two or three times over the same track.

MR. SEVERANCE: It does not do that.

MR. CORNEAU: I wanted to get it straight in my mind.

MR. SEVERANCE: I mean the movement. It goes over the scales and back, in one case, and in the other it goes right on.

MR. CORNEAU: You want the total distance, and not the length of the track over which it moves?

MR. SEVERANCE: I want the movement of the car.

MR. CORNEAU: I see.

By MR. SEVERANCE:

Q. And in making that movement that ore is elevated from the level of the tracks along the river, up to the plateau, about 55 feet, is it not?

A. I should say it is about that height; yes, sir.

Q. And there is a grade coming up, is there not?

A. Yes, sir.

Q. You say they get ten cents a ton for that service?

A. Yes, sir.

Q. Do they move ore there other than ore destined to plants of the Steel Corporation?

A. Not to my knowledge; no, sir.

Q. Those are the only docks at Lorain, are they not?

A. No, sir.

Q. What other road has docks there?

A. The Baltimore & Ohio.

Q. But it is the only connection at Lorain with the Lake Shore or the Wheeling & Lake Erie?

A. Yes, sir.

Q. The only connection with the lake, I mean?

A. Yes, at that particular point.

Q. That is what I mean—at Lorain.

A. Yes.

Q. What service is included in that ten cents?

A. That includes the movement from the time the car is loaded until it is delivered to the interchange track with the trunk lines.

Q. That includes the weighing of the car?

A. It is weighed when it is unloaded from the ship.

Q. Do you not know, as a matter of fact, Mr. Kennedy, that it is weighed after it is loaded on the car, at the track scales in the yard of the Lake Terminal?

A. It was not my impression, from the observation I made at that time.

Q. You would not dispute that, would you?

A. Well, I would, for the machinery they have. I dispute that, yes.

Q. You do dispute that?

A. Yes, sir.

Q. You are not aware of the fact that they have a very high priced automatic set of scales there up in the yard, on which every carload of the ore is weighed—both the loaded and the empty car?

A. That comes direct from the ship?

Q. Yes.

A. That is not my knowledge.

Q. On its way to the trunk lines?

A. That applies in connection with the dock ore; with indirect ore, so to speak.

Q. It applies to all of it?

A. Not to my knowledge; no, sir.

Q. You do not know?

A. I could not observe it to that extent.

Q. You would not undertake to deny that, of your own knowledge, would you?

A. No, sir, I would not. I am judging from the machinery installed at the port, that they have the same kind of machinery as the Pennsylvania have at Cleveland.

Q. You are arriving at your opinion from a course of reasoning, rather than from actual personal observation?

A. No; I made the observation.

Q. You made an observation of something down on the dock, but you made no observation of the movement of the cars up in the yard, to see whether or not they went over the scales and were weighed?

A. The particular cars from the boats, no. There were no cars that went over the scales, to my knowledge.

Q. You do not know whether they did or not?

A. I did not see them go over, and I was on the tracks right there.

Q. You did not see them?

A. The same identical cars.

Q. There are a good many tracks there?

A. Not so many over the scales.

Q. But there are a good many tracks in the yard?

A. There is a different lead to the scale.

Q. Do you know whether the ore cars are weighed on the scales before they go down to the dock?

A. They are; yes, sir.

Q. Do you know the point at which the Lake Terminal takes the cars from the Wheeling & Lake Erie, or its connection there?

A. The point at which they take the ore?

Q. Not the ore; the cars.

A. The point at which they take the cars from the Lake Terminal? That is the Lorain & West Virginia. It is operated by the Wheeling & Lake Erie, at a point near South Lorain.

Q. Across the river?

A. Yes.

Q. Is that the point to which the Lake Terminal goes with its own power after the empties?

A. Yes, sir; they are put in the yard you spoke of.

Q. They go there, to this yard, with their own power, and take the empties and run them into the scales and take them down to the dock and bring out the loads?

A. That is my observation.

Q. But you did not observe whether they weighed the loads when they got them up there?

A. Those particular loads, no, sir; they did not weigh the loads that I looked at.

Q. Did they not have to weigh those loads, to see whether the cars were over weight or full weight? Do they not trim the car?

A. They trim the car, yes; but that can be regulated very well by the scale——

Q. I am not asking you what could be done very well. I am asking you whether you know, of your own knowledge, what was the actual practice in those yards.

A. I only made two days' observation.

Q. And when was that?

A. Last year and this year.

Q. At what time this year?

A. In May. Last year, I think, it was in September.

Q. Take the Newburg & South Shore that you spoke of, at Cleveland. You said they get ten cents?

A. Yes.

Q. And they deliver ore from what dock?

A. The American Steel & Wire docks.

Q. The American Steel & Wire Docks at Cleveland?

A. Yes, sir.

Q. Is that ore that they take over the docks, if you know, destined to other parties as well as to plants of the Steel Corporation?

A. Not to my knowledge.

Q. Do you know anything about it?

A. The general impression I got was that it was all Steel Corporation ore.

Q. That was the general impression that you got?

A. Yes.

Q. Would you undertake to state that it is not the fact that both at the Lake Terminal and the Newburg & South Shore there is handled ore over those docks, delivered to the trunk line, and destined to other points than the plants of the Steel Corporation?

A. I would not say that; no, sir.

Q. You do not know, do you?

A. No, sir.

Q. That is what I thought.

A. It would be the emergency cases, I imagine, if it was.

MR. SEVERANCE: I move to strike out that answer, as the witness' imagination. We are getting too much imagination as it is. I am trying to get a few facts.

MR. CORNEAU: Well, I think it is a part of his answer, properly.

By MR. SEVERANCE:

Q. The rate up at the upper lake ports in Minnesota includes the handling through the docks does it not?

A. Yes, sir.

Q. Those are very large and expensive constructions, are they not?

A. Yes, sir.

Q. The Missabe dock at Duluth is the largest ore dock in the world, is it not?

A. I believe it is; yes, sir. It is one of the largest, anyhow.

Q. The ore is classified at those docks, is it not?

A. It is classified before it comes to the docks, to my knowledge.

Q. It is kept separate; the different kinds of ore are kept separate in the docks, are they not?

A. Yes, sir; in bins.

Q. In the pockets in the dock?

A. Yes.

Q. And it is loaded separately, so as not to be mixed on the ship?

A. That is right.

Q. And this is all included in the rate, is it not?

A. Yes, sir.

Q. And the use of the facilities is included in the rate

A. Yes, sir.

Q. You spoke about a return movement to lake ports, of coal, coke and steel products. Do you happen to know whether there is a large or a small return movement of loaded ore cars over the Bessemer & Lake Erie?

A. I could not speak on that very authentically, no.

Q. You know there are some empties?

A. I know there are some empties going back.

Q. You know the bulk of the cars going back go back empty?

A. But they are stopped en route, a great many of them, for coal.

Q. Between here and Conneaut?

A. Yes, on the Bessemer & Lake Erie Road.

Q. Where are they stopped?

A. The big mine is up this side of Butler; just between the Allegheny River crossing of the Bessemer & Lake Erie and Butler.

Q. How far is that from Pittsburgh?

A. I judge it is about 18 or 19 miles.

Q. Would you undertake to testify that over five, or at the outside, ten per cent of the ore cars go back to Conneaut loaded with coal or anything else?

A. How much?

Q. Over five or ten per cent.

MR. CORNEAU: Do you mean arriving at Conneaut?

MR. SEVERANCE: I mean that go north, loaded.

MR. CORNEAU: As I understand, he has just made the distinction between those leaving Pittsburgh loaded and those picking up loads en route.

MR. SEVERANCE: I mean going to Conneaut.

THE WITNESS: I could not say whether they exceed that or not.

By MR. SEVERANCE:

Q. You do not know?

A. No, sir; I do not.

Q. What are the finished products manufactured by the Pittsburgh Steel Company?

MR. CORNEAU: I object to that as not cross examination, and as incompetent, irrelevant and immaterial.

THE WITNESS: They manufacture billets, nails, wire, wire fences, staples, cotton ties, hoop and band steel. I believe those are the general products.

By MR. SEVERANCE:

Q. Do you use your own billets, or do you sell billets?

A. We use practically all of our own billets. We sell some few.

Q. The intention is to manufacture your own billets, is it not, and use them up?

A. Yes, sir.

MR. SEVERANCE: I think that is all.

MR. CORNEAU: With your permission, Mr. Severance, we will defer the re-direct examination of Mr. Kennedy in order that we may hear Mr. Moore now.

MR. SEVERANCE: That is perfectly satisfactory.

HENRY R. MOORE,

a witness produced by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. CORNEAU:

Q. What is your full name, please?

A. Henry R. Moore.

Q. What is your business?

A. I am traffic manager of the Republic Iron & Steel Company, with home office at Youngstown, Ohio.

Q. How long have you held that position?

A. Since June, 1899.

Q. What was your occupation before that time?

A. I was general freight agent for the Cleveland, Canton & Southern Railroad, now a portion of the Wheeling & Lake Erie.

Q. And it ran from where to where?

A. It ran from Cleveland to Zanesville, with a branch from Canton to Sherodsville.

Q. How long were you general freight agent of that road?

A. From 1890 to 1899, I believe.

Q. Prior to that, had you had any railroad experience?

A. Prior to that I was city solicitor for the Lake Shore & Michigan Southern, with an office in Cleveland. That was from 1887 to 1890.

Q. In that position of city solicitor, were you required, in the course of your duties, to become familiar with rate matters?

A. Solicitation was based upon the naming of rates, yes, sir.

Q. In other words, it required some familiarity with rates in the district?

A. Yes, sir.

Q. As general freight agent, what, if anything, did you have to do with rate matters?

A. As general freight agent, I was the responsible party for the rates as published by the Cleveland, Canton & Southern Railroad.

Q. Did you directly have to do with the making of those rates?

A. Yes, sir.

Q. What are your duties as traffic manager of the Republic Iron & Steel Company? Just in a general way, I mean.

A. In a general way, they are to see that the rates on our products, shipments in and out, bear a proper relation to the rates in and out of other districts.

Q. Does or does not that line of work require you to come in contact with railroads and railroad men, and consult and confer upon rate matters?

A. It does, frequently.

Q. And does it require that you keep yourself familiar with the rates upon various commodities that your concern handles?

A. Quite generally, yes.

Q. While you were general freight agent of the railroad you have mentioned, did you have occasion to consider the various details of making rates?

A. In a limited way, yes. It was a small railroad.

Q. But it would require the same considerations to be

taken into account to make a rate on that road as on any other road, would it not?

A. Yes.

Q. And were you, at that time, more or less in contact with men engaged in the making of rates on other roads?

A. Yes.

Q. So that, I take it, you are pretty familiar with rate making on railroads; at least, in this vicinity, are you not?

A. I think so.

Q. And with rate conditions?

A. I think so.

Q. Mr. Moore, has your company pending a proceeding before the Interstate Commerce Commission with reference to rates on ore?

A. Yes, from Lake Erie ports to the Valleys District.

Q. Are there any other complainants besides your company?

A. There are sixteen others; seventeen in all.

Q. Who prepared that case for presentation to the Interstate Commerce Commission?

A. There are various steps in the preparation of the case. The costs were prepared by Mr. Muller, based upon data secured by personal observation of trained observers; but, in a general way, it was directed by our counsel and myself.

Q. I was going to ask you next to describe to us, briefly, the lines of investigation pursued in preparing that case.

MR. SEVERANCE: I object to that as immaterial. What is the purpose of this? Is it for the purpose of qualifying Mr. Moore?

MR. CORNEAU: It is for the purpose of qualifying him and showing that he has made an investigation, and the way in which he has investigated.

MR. SEVERANCE: For that purpose I have no objection; if it is merely to qualify Mr. Moore.

By MR. CORNEAU:

Q. You spoke, for instance, of having an investigation made of costs by Mr. Muller.

A. Yes.

Q. What other lines of investigation did you pursue?

A. We presented comparisons of the rates charged into the Valleys district, with rates charged in other districts on the same commodities.

Q. Did you make or have made any observations concerning the operating conditions on the different lines?

A. Necessarily that entered into it; but personally I did not make those observations.

Q. I said did you make or have made such observations.

A. We had them made; yes.

Q. I understood you to state a moment ago that Mr. Muller's analysis or division of accounts for the purpose of ascertaining costs was based to some extent on certain of these observations.

A. Yes, sir.

Q. Does the Steel Corporation operate furnaces which consume ore, in the district concerned in this complaint?

A. Yes, sir.

Q. Did it join in the complaint?

A. It is not a party to the complaint.

Q. Was it asked to become one?

A. Not by any one, so far as I know.

Q. Why was that?

MR. SEVERANCE: I object to that as incompetent and immaterial. It cannot make the slightest difference why they were not asked. They may not have liked the color of the eyes or the clothes of the Steel people.

MR. CORNEAU: I withdraw that.

By MR. CORNEAU:

Q. Can you state whether or not there is any reason why it would not be, in your judgment, to the advantage of the Steel Corporation to join in that?

MR. SEVERANCE: I object to that as incompetent and immaterial, no foundation being laid whatever, and it not being a question for expert testimony, and as asking for a conclusion or a speculation. The proper testimony would be to show the

facts and circumstances, and let the Court itself draw its deduction.

MR. CORNEAU: I will change it, then, and put it this way.

By MR. CORNEAU:

Q. Will you state whether or not there are any considerations which would make it to the interest of the Steel Corporation to maintain the present rate to Youngstown?

MR. SEVERANCE: I make the same objection. That is asking purely for a conclusion of the witness, and an opinion upon a matter that is not a subject for expert testimony. I object to it as incompetent and immaterial, and because no foundation is laid.

MR. CORNEAU: I think it is a subject of expert testimony.

(By request the stenographer repeated the pending question as follows:)

"Q. Will you state whether or not there are any considerations which would make it to the interest of the Steel Corporation to maintain the present rate to Youngstown?"

THE WITNESS: The same question was touched upon in the investigation; that is, in our presentation of our case before the Commission; and, at that time, I stated that in my opinion the Corporation would be willing, naturally, to stand a high rate on a portion of their business into the Valleys, based upon the handling of a large portion of its business into the Pittsburgh district over its own rails.

MR. SEVERANCE: I move to strike out the answer of the witness. It is clearly apparent from the answer that the matter is not one for expert testimony, and that we are merely given the benefit of an opinion by a gentleman who has not shown himself familiar with all of the circumstances.

MR. CORNEAU: I think the next question will relieve your mind on that.

By MR. CORNEAU:

Q. What bearing has the Youngstown rate on the Pittsburgh rate?

MR. SEVERANCE: I make the same objection.

THE WITNESS: They are inter-related.

By MR. CORNEAU:

Q. Just explain that a little.

A. I think dating from the 90's, given one rate it was always possible to figure exactly the other, in that the Pittsburgh rate was always twice the Valley's rate, plus the dock charge. In other words, if the rate to Pittsburgh was $1.18, you deducted 20 cents for the dock charge at Lake Erie ports, and the quotient was 98 cents; and half of 98 was 49. Adding 20 cents to the 49 cents——

Q. Adding two cents, you mean, do you not?

A. (Continuing) Made the Youngstown rate 69 cents. So that any change in the one rate would naturally produce a like change in the other.

Q. State whether or not, in view of this inter-dependence of the rate——

MR. SEVERANCE: He has not said "inter-dependence"; he said "inter-relation."

By MR. CORNEAU:

Q. In view of this inter-relation of the rate, then, you did, in the course of your investigation of the Youngstown situation, make or have made an investigation with reference to the rates to the Pittsburgh district also?

A. Our investigation of the ore rate into the Valleys quite naturally led to an analysis of the rate structure into Pittsburgh, and a portion of our complaint with reference to the rates into the Valleys was based upon the conditions of the pending rate at Pittsburgh.

Q. Do you know, Mr. Moore, of any furnace point obtaining ore from Lake Erie ports and situated within 300 miles of Lake Erie ports, other than Pittsburgh, which takes as high a rate as Pittsburgh on ore?

A. Within 300 miles?

Q. Yes.

A. Well, possibly there are not. I do not know, but the Josephine, and some point like that, may have a less rate, but

there is no point within a like distance of Lake Erie that has as high a rate.

Q. You spoke, in one of your answers, a while ago, of the fact that the Corporation uses a smaller proportion of its ore, or a small proportion—I have forgotten exactly your language; anyhow, a proportion of its ore in the Youngstown district; can you tell me about what proportion of its ore is used there, of the pig iron produced there—roughly, of course?

MR. SEVERANCE: I do not want him to guess at it. He ought to be able to testify accurately, if at all.

A. I cannot give accurate data on that. It is easily figured on the furnace capacity of the corporations, outside of the valleys and in the valleys.

By MR. CORNEAU:

Q. Well, figure it in that way. About what percentage would you say?

MR. SEVERANCE: I object to a mere estimate, when it is perfectly easy to get the facts.

A. My best judgment would be that they have probably about 14 per cent. of their production in the valleys. That is exclusive of their operations south of the Ohio River.

By MR. CORNEAU:

Q. Mr. Moore, giving consideration to the facts ascertained by the investigation made by you and under your direction, as far as it was made under your direction, what is your opinion as to whether or not——

MR. SEVERANCE: Excuse me for interrupting, but I do not want to misunderstand Mr. Moore. I understand that 14 per cent. is based on the entire business of the company at Chicago and everywhere else?

THE WITNESS: Yes, sir.

MR. SEVERANCE: I object to that as not responsive, then.

MR. CORNEAU: Oh, yes it is.

MR. SEVERANCE: The question was asked as to the relation between the Pittsburgh consumption, as I understand it——

THE WITNESS: No. I answered that question in reference to general operations.

MR. SEVERANCE: Very well, if that is responsive.

MR. CORNEAU: I think it is. I think it was responsive to my question. I will ask the stenographer to read the pending question.

(The stenographer read as follows:)

"Q. Mr. Moore, giving consideration to the facts ascertained by the investigation made by you and under your direction, as far as it was made under your direction, what is your opinion as to whether or not——"

MR. CORNEAU (Continuing): the 96-cent rate on ore from lower Lake ports to Pittsburgh is excessive?

MR. SEVERANCE: Objected to as incompetent and irrelevant and immaterial. It is not relevant to any issue in this case.

A. Our investigation was, of course, wholly with reference to the reasonableness of a rate of 56 cents to the valleys. And, as I have stated, the two rates are largely interdependent, interrelated. We have claimed, and have endeavored to show, that the rate to the valleys was not a reasonable rate.

By MR. CORNEAU:

Q. Let me interrupt there a moment. Do you think it was too high or too low?

A. We thought the rate was too high.

Q. Go on.

A. And the same factors that would enter into the rate from the Lake to the valleys would enter into the rate from the Lake to Pittsburgh, in producing a rate which would be, in my opinion, greater than the cost that the service warrants.

Q. Can you state briefly the different factors that you take into account in getting at that?

MR. SEVERANCE: I make the same objection, that this is all irrelevant to the case.

A. We consider that traffic of the density that obtains between the Lake and the Valley and Pittsburgh Districts

warrants the application of a measure that shall be based upon the cost of the service plus a reasonable return for the capital invested, and the only other element is the element of risk, and that is nil on the traffic referred to.

By Mr. Corneau:

Q. You spoke of the density of traffic as warranting the application of that principle. That means, then, that you have taken into consideration the density of traffic?

A. Yes sir.

Q. And how about operating conditions?

A. Naturally, in establishing a basis for cost, the operating conditions were taken into account.

Q. In operating expenses, do you include the item of maintenance or up-keep?

A. I rather think that those are included, but I would not say positively. The accountant has a method of taking certain primary accounts where the items of expense are readily ascertainable, and fixing the items that cannot be determined by the percentage that the operating ratio bears to the total, and that method was pursued in the exhibits which we filed in our case.

Q. By the way, what was the operating cost over the Bessemer & Lake Erie Railroad per ton of ore as figured, if it was figured?

Mr. Severance: I object to that as incompetent and immaterial. Mr. Moore does not claim that he made these figures himself. We make the further objection that the whole inquiry is irrelevant to any issue in this case, and the testimony would be hearsay.

(Upon request the question was repeated by the stenographer as above recorded.)

Mr. Corneau: I will withdraw that question.

By Mr. Corneau:

Q. Do you know what the operating cost over the Bessemer & Lake Erie is on a ton of ore, to Pittsburgh?

Mr. Severance: The same objection.

A. I know the figure that was ascertained by our accountant, yes.

By Mr. Corneau:

Q. Did you or not collaborate in that work?

A. I did, to the extent that I directed that it should be done.

Mr. Severance: Do you hear that? He says he collaborated to the extent that he directed that it be done. He did not make the figures.

By Mr. Corneau:

Q. Were the figures submitted to you; did you go over them with the accountants?

A. Yes; the figures were submitted; that is true. We were anxious to establish for our satisfaction what the cost was, and to obtain that information we had certain things done, and when that result was obtained, it was submitted, and submitted by us as the best evidence we could give the Commission.

Q. Where did you get your base figures that you used, the figures on which the analysis was made?

Mr. Severance: I object to that. The witness has stated that he did not make these analyses. They were made by the accountant, and it seems to me the only fair way, if you want this evidence, would be to produce the accountant, so that he could be cross examined.

Mr. Corneau: We have told you that we intend to do that.

Mr. Severance: Well, Mr. Moore does not add anything to it by saying that the figures were brought to him and he handed them to the Commission.

Mr. Corneau: Yes; I think Mr. Moore probably knows where those figures came from, and I will ask him that.

Mr. Severance: Objected to as incompetent, immaterial and irrelevant.

By Mr. Corneau:

Q. I will ask you if you know upon what data the computations made by the accountant under your direction were made.

MR. SEVERANCE: The same objection.

A. The computation rests first upon personal observation of train movements. We supplied Mr. Muller with a competent man to make those observations.

By MR. CORNEAU:

Q. Then, if I may interrupt, he then had to have figures concerning the gross earnings and operating expenses and so on?

A. Yes sir.

Q. Where were those taken from

A. Those were taken, as I understand it, from the files of the Commission in Washington.

Q. The Interstate Commerce Commission?

A. Yes.

MR. SEVERANCE: That is what he understands; but he does not know.

THE WITNESS: I did not get them myself, no.

By MR. CORNEAU:

Q. Did you or not, from time to time, as the work was in progress, and before the case was presented, go over the matter with Mr. Muller and consult with him about it?

A. I did frequently, yes; not only with Mr. Muller, but with the field man, the man out in the field.

Q. Will you please state, Mr. Moore, what the figure arrived at for operating cost per ton was from Conneaut to Pittsburgh or North Bessemer as the case might be?

MR. SEVERANCE: I object to that for the same reasons. I appeal to my friend. The witness has said that he knows nothing of his own knowledge, and you can make the computations. He had a man in the field who ought to be here to be examined, if you want to prove this, and he had another man in the Interstate Commerce Commission who should be here for examination.

MR. CORNEAU: If I waive this will you say you will not be asking him what he knows about costs?

MR. SEVERANCE: It depends on whether you go into the matter of costs. I certainly shall not cross examine about costs if you do not go into it.

By MR. CORNEAU:

Q. Will you answer that last question?

A. What was the question?

(The question was repeated by the stenographer as follows):

"Q. Will you state, Mr. Moore, what the figure arrived at for operating cost per ton was from Conneaut to Pittsburgh or North Bessemer as the case might be?"

A. The figures as the the result of the investigation show 28.24 cents per ton of ore from Conneaut to North Bessemer.

Q. That is over the Bessemer & Lake Erie Road?

A. Yes sir.

Q. In the same connection was a similar investigation made with reference to rates on the D. M. & N. and the Duluth & Iron Range from the Minnesota Ranges to Lake Ports?

A. Yes sir. Mr. Muller submitted the result of an examination of costs on each of those roads. I do not remember the exact figures, but I think it was 24 or 25 cents.

MR. SEVERANCE: I move to strike out the answer. He has not been asked to state the figures.

By MR. CORNEAU:

Q. What figures were arrived at?

MR. SEVERANCE: I object to that as irrelevant, not only in this case, but in the case in which the figures were made up, as that involved only the rate from the lower Lake Erie ports to the Youngstown District; and, further, the witness shows it is merely hearsay. The figures were made up by another person and he knows nothing about them.

THE WITNESS: The cost ranged between 24 and 25 cents.

By MR. CORNEAU:

Q. Do you know what the rates are on those roads for the movement of ore?

MR. SEVERANCE: Is there any dispute about that?

MR. CORNEAU: I wanted to ask him if he knows.

A. The present rate is 60 cents a ton.

By MR. CORNEAU:

Q. What is your opinion as to whether or not that rate is an excessive rate for the service?

MR. SEVERANCE: Objected to as incompetent. No foundation has been laid for it and it is entirely irrelevant, and it does not appear that the witness knows anything about it except he has seen some figures made up as to cost. It does not appear that he has ever seen the roads, or knows anything about their cost or cost of operation, and there is clearly no foundation laid for the opinion.

By MR. CORNEAU:

Q. You may answer the question now.

A. We have felt that the rate is excessive, based upon the cost of the service, and its relation to its returns, and the returns on the investment.

Q. Have you, in addition to that, made some investigation or are you familiar with other rates for similar service, for instance in the Michigan ranges?

A. Well, we filed with the Commission our comparison of the rates from the Iron River District over the Northwestern to Escanaba of 40 cents, as that was comparable, we figured, to our Youngstown operation, particularly.

Q. Are you somewhat familiar with the density of traffic over these other roads as compared with the traffic on the Duluth, Missabe & Northern?

A. I do not know the exact volume of business except I know in a general way that the Missabe Roads greatly exceed the traffic on the Northwestern.

Q. In other words, what I am trying to get at is whether or not the scope of your investigation has covered practically the same grounds in the case of the Duluth, Missabe & Northern and the Duluth & Iron Range as in the case of the Youngstown rates?

A. Yes.

Q. And your opinion is made up as the result of all you

have learned, from your own knowledge, or the investigation under your direction?

MR. SEVERANCE: Same objection. It is irrelevant.

A. Yes.

By MR. CORNEAU:

Q. You testified, I believe you said, in this case of yours before the Interstate Commerce Commission?

My recollection is that you there testified that a request for the reduction of rates was presented by the parties complainant before the Commission to the different railroads. Is that the fact?

A. Yes.

MR. SEVERANCE: It seems to me that is leading and irrelevant to any issue in this case.

By MR. CORNEAU:

Q. Now I will ask you if at that time you testified that this request was presented to the railroads involved.

MR. LINDABURY: That is leading.

By MR. CORNEAU:

Q. Was or was not a request presented to the railroads involved for a reduction in the rate?

A. There was.

MR. SEVERANCE: I object to that as irrelevant to any issue in this case.

By MR. CORNEAU:

Q. How was that presented?

MR. SEVERANCE: Same objection.

A. We asked Mr. Wood, as one of the leading executives of the Eastern Ohio and Western Pennsylvania Association of Ore-Carrying and Coke-Carrying Railroads to call a meeting of his committee.

By MR. CORNEAU:

Q. And was there such meeting?

A. There was.

Q. Who went there in behalf of the interests that you were representing before the Commission?

A. Mr. Wood attended the meeting; also Mr. McCabe; I will say representatives of the Pennsylvania Railroad, the New York Central——

Q. You misunderstood me, I think. I asked you who went in behalf of the furnace men?

A. A committee appointed by the furnace people.

Q. Were you on that committee?

A. I was on that committee.

Q. Then you attended the meeting?

A. Yes, sir.

Q. And presented the request?

A. Yes, sir.

Q. What railroads or what gentlemen were represented?

A. The Pennsylvania Lines, the New York Central Lines, the Erie, the B. & O. Railroad, the Lehigh Valley, the Bessemer & Lake Erie.

Q. Who represented the Bessemer & Lake Erie?

A. Mr. Baird.

Q. Do you know what his position is?

A. General Freight Agent.

Q. After you had presented your request, what occurred?

A. A general discussion on business conditions, and after an interview and discussion of two or three hours we were told that our railroad friends would take the matter under consideration and confer with each other on the subject and give us an answer later, which they did.

Q. Do you know whether or not the meeting continued after you withdrew from the immediate room where it was being held?

A. I am not clear on that. I do not remember now positively whether it was a full adjournment or not.

Q. I take it you do not recall whether the meeting broke up at that time?

A. I do not remember positively whether the railroad peo-

ple remained in session after we left or not. I am not entirely clear on that.

Q. Has your company, Mr. Moore, any mines which are located exclusively on the Duluth, Missabe & Northern Railroad or the Duluth & Iron Range Railroad, or which are bound by contract to ship over either of those roads?

A. We have a number of mines on the Duluth and Iron Range.

Q. Are these mines that you speak of as being located on the Duluth & Iron Range located on that road exclusively?

A. Yes, sir; my recollection is that we are confined to shipment by the Duluth & Iron Range.

Q. Can you tell me what percentage of your ore you ship either over the Duluth, Missabe & Northern or the Duluth & Iron Range?

A. Our schedule for the present season, the season of 1912, provides for about 53 per cent of the total tonnage from our own mines via the Duluth & Iron Range; the other 47 per cent is from mines on the Great Northern.

Q. To the extent to which you have to or do ship your ore over the corporation road, what is the advantage, if any, that the corporation has over your company in the cost of producing a ton of pig iron?

A. You mean in reference to the movement to the upper Lake ports?

Q. To the upper Lake ports.

A. Yes.

MR. SEVERANCE: Objected to, as the witness has not shown himself qualified to give an opinion as to what the proper rate should be to the upper Lake ports. Therefore it is a mere speculation.

A. (Continued) We paid 60 cents a ton for transportation; for two tons of ore to make a ton of pig iron we pay $1.20. The Corporation pays the cost plus a reasonable profit on the investment.

By MR. CORNEAU:

Q. And that cost was something like 24 cents or 25 cents, as you testified a moment ago?

MR. SEVERANCE: No, he did not testify to that. He testified that somebody made up some figures that showed that.

MR. CORNEAU: Well, those are the figures that he gave. Is not that true?

THE WITNESS: Yes.

MR. SEVERANCE: He does not know anything about the figures and does not pretend to.

MR. LINDABURY: He does not know what the figures were except as he has been given them by somebody else.

MR. SEVERANCE: No, and he does not know how they are made up. He is perfectly frank about it. He does not claim to know anything about it.

By MR. CORNEAU:

Q. Assuming that this 24 cents or 25 cents—we will say 25 cents—is the actual cost to the Corporation, you pay $1.20, as I understand you, on your two tons?

A. Yes.

Q. It would then cost the Corporation how much to transport your two tons?

MR. SEVERANCE: I object to that——

A. Fifty cents.

By MR. CORNEAU:

Q. That would leave 70 cents you have paid in which could be applied to transporting the Corporation's ore, could it not?

MR. SEVERANCE: Oh, no, he did not say that. The Witness was fairer than the counsel seems to be——

MR. CORNEAU: Not at all——

MR. SEVERANCE: The witness admitted that the corporation was not obliged to furnish that railroad transportation for nothing, that they are entitled to some interest on their plant, and you are eliminating that.

MR. CORNEAU: Oh, no, I am talking about cost.

MR. SEVERANCE: No; you are talking about the cost of

transporting ore and I am talking about the cost of transporting their ore.

MR. CORNEAU: He says that to cover the cost of transporting a ton of ore——

MR. LINDABURY: You made a misstatement that might mislead the witness, that there would be seventy cents left.

By MR. CORNEAU:

Q. Will you figure it out and see how much would be left to them after paying the cost of transporting your ore?

MR. SEVERANCE: I object to that as the witness has not shown that he knows anything about the interest on the cost, which he says is a necessary element.

(Upon request the stenographer repeated the pending question as recorded.)

MR. SEVERANCE: That is objected to as meaningless and as incompetent and because there has been no foundation laid for it.

By MR. CORNEAU:

Q. Have you any trouble in understanding it?

A. I think I know what you mean. Assuming that the cost is 25 cents, $1.20 paid by us transports the four tons of ore and leaves them a margin of 20 cents.

Q. So that you would be out of pocket $1.20, and the Corporation in pocket 20 cents, leaving out of consideration profits on the transaction?

MR. SEVERANCE: Just a moment. That is not right at all.

MR. LINDABURY: Let him answer the question.

MR. SEVERANCE: It is hearsay and not a correct statement of what the witness has said.

(Upon the request the question was repeated by the stenographer as above recorded.)

A. Treating it as a plant facility for the two interests, yes, that would be the answer.

By Mr. Corneau:

Q. I do not understand just what you mean by treating it as a plant facility for the two interests.

A. I mean that if 25 cents is the cost, exclusive of the profit for the operation of the railroad, then it would be a plant facility, the same as a terminal railroad.

Q. In other words, you are treating the Missabe & Northern in that connection merely as a plant facility? You mean whatever profits it makes out of that, are profits in the whole operation of the business?

A. Yes, sir.

Mr. Severance: I object to that as leading and not at all what the witness testified to.

By Mr. Corneau:

Q. Let us make an assumption as to what will be a reasonable rate? Assuming, Mr. Moore, that prior to last November, when the rate was 80 cents, a rate of 40 cents would cover the cost plus a reasonable profit on the investment, or a reasonable return on the investment, and assuming that your company ships two tons of ore over the Duluth & Iron Range and the Steel Corporation ships two tons of ore over the Duluth & Iron Range, what advantage would the Steel Corporation have over your company in that transaction?

Mr. Severance: Objected to as incompetent and immaterial and purely speculative, and irrelevant to any issue in this case, and as not founded upon any testimony.

A. We would pay on two tons of ore $1.60. They transport four tons of ore, at the assumed reasonable rate of 40 cents, or $1.60; so we would have paid for the transportation of their two tons of ore at a reasonable rate of 40 cents——

By Mr. Corneau:

Q. In other words, it would have cost you $1.60 and would have cost them nothing?

A. Correct.

Q. Assume the case of a competitor in the Pittsburgh District and the Corporation shipping over its own line, the Bessemer & Lake Erie, to Pittsburgh, and the competitor

shipping over some trunk line: what would the additional advantage be to the Corporation, leaving out the idea of reasonable profit, based upon the figure you have given us of actual cost.

MR. SEVERANCE: Objected to on the same grounds, and because it is irrelevant.

A. If an independent, receiving two tons of ore over the trunk line, pays 96 cents a ton, his out of pocket amount is $1.92. The corporation, with a cost, that is, operating cost, of 28.24 cents would pay 57 cents, and they would have the advantage of the difference between 57 cents and $1.92, which would be $1.35.

By MR. CORNEAU:

Q. That would be the gross advantage, and the amount, whatever it is, that is above the reasonable profit, would be the net advantage?

A. Yes, sir.

MR. LINDABURY: Is this an examination in mathematics?

MR. CORNEAU: There seemed to be a good deal of difficulty on the part of you gentlemen as to just how those figures worked out, and I tried to clear it up.

By MR. CORNEAU:

Q. Now, Mr. Moore, will you state your opinion as to whether or not the advantage of the corporation in the matter of transportation would be sufficient to enable it to put its competitors out of business?

MR. SEVERANCE: I object to that as incompetent and immaterial. The witness has not shown that he has the slightest knowledge of manufacturing costs or the extent of the business conducted by the Corporation or by its competitors. Surely my friend will not ask this witness to give a speculative answer on such a question as that. I do not believe it of him.

MR. LINDABURY: He is not an expert on that.

MR. SEVERANCE: He is not an expert on that or anything unless possibly railroad tariffs.

By MR. CORNEAU:

Q. Now answer the question, please.

A. Well, I would have to premise that somewhat. Assuming that——

MR. SEVERANCE: (Interposing). I beg your pardon, but I object to Mr. Moore making any assumptions. He was not asked to make any assumption; he was asked a specific question, to which we have objected. If he is going to make assumptions that is another matter, to which we want to have an opportunity of objecting.

MR. CORNEAU: Well, you can move to strike it out.

By MR. CORNEAU:

Q. Go ahead and answer the question.

A. Assuming that we are on a parity as to raw materials, I would say that we are able to compete except in the item of transportation.

MR. LINDABURY: That is, that is the only difference.

MR. SEVERANCE: The only disadvantage.

THE WITNESS: Outside the question of natural advantages and raw materials.

MR. SEVERANCE: Your only handicap is transportation, as I understand your answer.

MR. CORNEAU: No, he says assuming—

THE WITNESS: (Interrupting). I said assuming that we are on a parity in the matter of raw materials—

MR. SEVERANCE: That you do not express any opinion on.

THE WITNESS: That is beyond my province.

By MR. CORNEAU:

Q. On the same assumption, do you think any competitor could stand up against the difference in transportation?

MR. SEVERANCE: I object to that as incompetent. Mr. Moore is not an expert on the manufacturing business and does not claim to be, and the question is not one for expert testimony. It is purely speculative.

MR. LINDABURY: Is he a manufacturer?

MR. SEVERANCE: No.

Mr. Reed: And it is further objected to because it involves a knowledge of the resources of the competitors of the Steel Corporation and the resources of the Corporation, and Mr. Moore is not shown to have any knowledge of the resources of the Corporation or its competitors.

Mr. Lindabury: And, further, it involves knowledge of the cost of production all along the line, not merely transportation cost, and the witness assumed to know only as to transportation costs.

Mr. Severance: I think I have included that in my objection.

By Mr. Corneau:

Q. Will you answer the question. The question is—

A. I remember the question all right. It is a self-evident proposition to my mind viewing it from the transportation standpoint, that assuming that costs—that is, that raw materials and costs are equal—that in a period of stress they would all go to the wall if they had to compete against the transportation advantages.

Mr. Corneau: That is all.

CROSS EXAMINATION.

By Mr. Severance:

Q. You have never been engaged in manufacturing, have you?

A. No, sir; I am not a manufacturer.

Q. You do not know anything about what it costs to make a ton of pig iron?

A. I would not attempt to tell you.

Q. You are not an expert on that?

A. No.

Q. How long have you been with the Republic Iron & Steel Company?

A. Since it was formed.

Q. When was that?

A. In 1899.

Q. Have you been traffic manager all that time?

A. Yes, sir.

Q. How does its size at present compare with its size in April, 1901?

MR. CORNEAU: Objected to as not proper cross examination and as irrelevant, immaterial and incompetent.

MR. SEVERANCE: I mean in the extent of its output.

THE WITNESS: About the same.

By MR. SEVERANCE:

Q. Just about the same?

A. Yes.

Q. It has not increased?

MR. CORNEAU: The same objection.

A. It has gone through a complete revolution from iron to steel.

By MR. LINDABURY:

Q. Within what time?

A. Within that period.

Q. What period is that?

A. From 1899 up to the present time.

MR. SEVERANCE: No, from 1901.

By MR. SEVERANCE:

Q. When did you become a steel plant?

MR. CORNEAU: The same objection.

A. Along in 1904, I think.

By MR. SEVERANCE:

Q. What is your output now compared with your output in 1904, when you first manufactured steel?

A. Much larger; the steel has been a steady growth.

Q. In spite of this transportation handicap you have talked about the Republic Iron & Steel Company has had a steady growth?

A. Yes, in spite of it.

Q. In spite of it?

A. In spite of it.

Q. And you are the owner of some mines, you say, on the Iron Range or the Missabe Railroad?

A. On the Iron Range Railroad.

Q. What are the names of your mines?

A. I could not tell you.

Q. Have you ever been there?

A. I have been there; yes, sir.

Q. You do not know the names of the mines, though, you say?

A. I do not know, no.

Q. You have not been there?

A. I have been there, but I have not been there so as to be able to give you——

Q. (Interposing) How lately have you been there?

A. I think I have not been there since the summer of 1905.

Q. 1905. Well, you do not know anything about the extension of the ore docks there since 1905, then, do you?

A. No, sir.

Q. Nor the sums that have been invested in the road since then?

A. No, sir.

Q. You do not know anything about the weight of the rail on that road?

A. No, sir.

Q. You do not know anything about the expensive or inexpensive character of the construction?

A. No; I would size that all up with reference to their operating reports as shown by operating men.

Q. I understand, and I am trying to find out what you know as to what you have testified here. You do not know anything about the Iron Range Railroad except that it can be found at a certain place on the map, and that it serves certain mines in which your company is interested?

A. Yes, that is all.

Q. If, as a prerequisite to giving an opinion on the reasonableness of a rate it was essential to know any of those facts, you would not be able to give an opinion, would you? I

am making an assumption. You are assuming that it is necessary to have those facts at hand?

A. We arrived at the facts as best we could from reports.

Q. I am asking you whether if, as a matter of fact, it is a necessary prerequisite to an opinion upon the reasonableness of a rate to know the cost of a property and the nature and character of the service performed, you are in a position to give an opinion as to the reasonableness of the Missabe rate?

A. Not if you use my individual knowledge.

Q. The Iron Range rates, I mean, not the Missabe.

A. Not if you base it upon what I personally know; no, sir.

Q. You could not give any opinion, no. You spoke, at the conclusion of your testimony, about the advantage possessed by means of transportation, and you gave it as your opinion that in a period of stress the Steel Corporation could put all its competitors out of business?

A. Yes, sir.

Q. You do not recall that the Republic Iron & Steel Company was put out of business in the stress of the panic of 1907, do you?

A. No, sir.

Q. You do not recall that it has been put out of business at any time, do you?

A. No, sir.

Q. You do recall, do you not, that the Republic Iron & Steel Company itself initiated the largest reduction that was made by any company a year ago in the price of steel?

A. Yes.

Q. And that it brought down prices all around?

A. That is true.

Q. You felt that you were strong enough to do that in spite of this handicap, did you not?

A. I presume we did.

Q. And you survived that?

A. So far, yes.

Q. How much was the reduction you made in the price of steel at that time?

A. $3 a ton, according to my recollection.

Q. How much of this excessive transportation cost on the Missabe is included in the cost of a ton of steel? Figure that out for me, please?

A. That gets into the manufacturing end. I would assume that it is three tons of ore to a ton of steel. Now, that is merely an assumption on my part; I do not know that that is right.

Q. Assuming that you are correct in your statement that 25 cents was the cost of moving a ton of ore down to the Lake, for you up there, and that at that time they were getting 80 cents, then, leaving out of consideration the question of the cost of the property involved in the movement and maintenance charges and everything of that kind, there was a profit of 55 cents a ton on the three tons, and that would be $1.65, would it not?

A. Yes.

Q. That is your handicap?

A. Part of it.

Q. So far as that was concerned up there that was your handicap?

A. Yes.

Q. Then, take it down on this end; what was your handicap on the three tons of ore from the Lakes to the Youngstown District; how much are you asking to have your rates reduced?

A. We have not asked any amount.

Q. How much did you testify they should be reduced?

A. I did not testify to that.

Q. How much that they ought to be reduced?

A. I did not say.

Q. What did you say?

A. I did not say; I left that entirely to the Commission.

Q. What do you pay now?

A. 56 cents.

Q. Do you think it should be reduced to 40 cents?

A. I am not going to say, Mr. Severance——

Q. I think you will answer my questions——

A. (Continuing)——what the rate should be, because we gave the Commission the best information we could give as to the conditions surrounding the movement of the traffic, and left the question of rates to the Commission.

Q. You left it to the Commission because you had to; but you are a witness here, and you have assumed to give testimony to the effect that those rates are too high. Now on cross examination I ask you how much too high they are. Is 56 cents too high?

A. It is too high to the extent that the cost of the service plus a reasonable return on that coal is less than 56 cents.

Q. I ask you to give me a specific answer to my specific question. How much should the rate be? You say the rate is too high. Now, you must know what you think the rate ought to be. How much do you say it ought to be?

A. I have never figured the rate for myself as to what the rate should be.

Q. You do not pretend to know whether it is too high, then, do you?

A. Yes, I do.

Q. How much too high is it?

A. To the extent that a reasonable profit based on the cost of service is less than 56 cents.

Q. Should the rate be 50 cents?

A. The question of profit comes in there.

Q. Do you know anything about it at all? Is your opinion worth anything? How much should the rate be? You say it is too high. How much too high?

A. I have not figured——

Q. (Interposing) You do not know, then, whether it is too high at all?

A. I can refer you to the exhibit on file.

Q. I am not asking you to refer me to any exhibits. You have testified that those rates are too high. Now I ask you,

on cross examination, how much too high they are, and I want an answer. How much too high is that 56 cent rate?

MR. CORNEAU: I object to the question.

MR. SEVERANCE: That question is proper cross examination.

By MR. SEVERANCE:

Q. How much too high is it?

A. I have not figured myself as to what that rate should be.

Q. Is 50 cents a fair rate?

MR. CORNEAU: He says he has not figured it.

A. Those questions are all useless. I tell you frankly that I have not figured it.

By MR. SEVERANCE:

Q. Then why did you assume to come in here and testify that the rate is too high?

A. Because I know what the cost is.

Q. What is the cost?

A. Seventeen cents on the loaded movement.

Q. It is?

A. Yes.

Q. How much should be added to that to get a fair rate?

A. I don't know. I do not profess to know. We have given the Commission the best information we have, and we say that we think the rate is too high.

Q. You have assumed to come in here and testify that the rate is too high?

A. Yes.

Q. Now, I ask you if 50 cents would be too high? What do you say to that?

A. You can go down the line of——

Q. (Interposing) I am proposing to conduct this examination——

A. You can conduct it, but I will not express an opinion as to what that rate should be because I have not fixed it in my own mind.

Q. You were very free, in answer to the counsel for the Government, to answer that 56 cents is too high. Now I am entitled to an answer to my question as to whether 50 cents is too high.

A. We have a complaint before the Government right now.

Q. Just answer my question——

A. (Continuing) In which we have attacked the 56 cent rate.

Q. It does not make any difference——

A. We have not, even before the Commission, intimated what we think the rate should be.

Q. That is quite immaterial to me, whether you have done that or not. You have testified as a partisan witness freely, and have volunteered, for the Government, that 56 cents is too high?

A. I did not volunteer that 56 cents is too high. You are putting words in my mouth that do not belong there.

Q. You have stated that 56 cents is too high?

A. I believe it is, yes.

Q. Is 50 cents too high?

A. I will not express an opinion.

Q. Is 45 cents too high?

A. I will not express an opinion.

Q. Is 40 cents too high?

MR. CORNEAU: I object to any further examination on this line.

THE WITNESS: I will not answer.

By MR. SEVERANCE:

Q. Is 35 cents too high?

A. You may go down to cost, if you like.

Q. Is 55 cents too high? I want an answer to that.

A. I will not answer it.

Q. You will not answer it?

A. No.

Q. You are a valuable expert.

A. I have given you a fair, frank and free answer as to what I think that rate should be.

Q. You have not given me any answer.

A. I have. I have said that it should be cost, plus a reasonable profit on the investment.

Q. That may be 56 cents, for all you know.

A. All right, it might be.

Q. Maybe 56 cents is not too high. Is that so? Perhaps that is all right.

A. If a reasonable profit makes it 56 cents, then 56 cents would be a reasonable rate.

Q. Then we are right around to this position, that you do not know anything about what a reasonable rate to that Valley district is. Is not that so?

A. I say I do.

Q. You do?

A. Yes.

Q. What is a reasonable rate?

A. Cost, plus a reasonable profit.

Q. How much is that?

A. That is for the Commission to say.

Q. Oh, no; it is for you. You are an expert. You are testifying as an expert.

A. I am not an expert.

Q. Certainly. You could not have given all this testimony except as an expert. Can you not see the curious position in which you leave yourself by—

MR. CORNEAU: I object to that.

MR. SEVERANCE: I will finish my question.

MR. CORNEAU: You have no right to make such a comment as that.

By MR. SEVERANCE:

Q. You have testified, for counsel for the Government, that 56 cents is too high. I ask you whether 50 cents or 55 cents is too high, and you will not answer. Is that your attitude?

A. That is. I will say—

Q. That is your attitude?

MR. CORNEAU: Let him explain.

THE WITNESS: Yes, it is.

By MR. SEVERANCE:

Q. Now, to go back: I was trying to find out how large the handicap was, but I could not do it. You had a handicap of 55 cents a ton, according to your assumption, not taking into account any profit or interest on the cost of the Iron Range Road. There is $1.65 handicap. Having that handicap, you made a voluntary reduction of $3.25, which is twice the handicap; and you did that of your own motion. You made that cut of $3.25 of your own accord—the Republic Iron & Steel?

A. I presume so.

Q. And you did not "bust," did you?

A. Not yet.

Q. You are still running?

A. Yes.

Q. Although you handicap yourself twice the extent you claim you are handicapped, even on your own figures?

A. Yes; that is our privilege.

Q. You stated, in answer to counsel, that the 96 cent rate to Pittsburgh was too high. How much is it too high?

A. I do not know.

Q. How do you know it is too high at all?

A. I said the two rates were inter-related, and we had complained of the Youngstown rate.

Q. Are you willing to come in here and testify under oath that the rate is too high, merely because you have complained of it, without having any other reason?

A. I have the same—

Q. Is that the only reason?

A. I have the same feature, of the element of cost on the Pittsburgh rate. The cost is 28.24 cents, and they charge 96 cents.

Q. What is a fair rate to Pittsburgh? How much less than 96 cents would be a fair rate?

A. As much more than 28.24 as a reasonable return on the investment would require.

Q. I ask you to give me a specific answer, as a railroad expert, because that is the capacity in which you are testifying,

as to what would be a fair and reasonable rate on ore from the lake ports to the Pittsburgh district.

A. I have not figured it.

Q. You do not know, do you?

A. No, I am not prepared to say. I would say it should not exceed the Wheeling rate, by comparison.

Q. What is the Wheeling rate?

A. Sixty cents.

Q. You think it should not exceed the Wheeling rate?

A. I say that I think it should not exceed the Wheeling rate by comparison.

Q. But that does not involve any consideration of the cost of the business?

A. That eliminates all the other items of cost and profit.

Q. Yes. Basing it wholly on comparison, you say that?

A. Yes.

Q. What is the cost of getting coal to the furnaces at Wheeling?

MR. CORNEAU: I object to that as incompetent and immaterial, and not proper cross examination.

THE WITNESS: The coal, I think, originates in the vicinity of Wheeling.

By MR. SEVERANCE:

Q. What is the cost of getting coke to the Wheeling furnaces?

A. $1.35.

Q. What is the cost of getting it to the Pittsburgh furnaces?

A. Seventy-five cents.

Q. Really? What is the cost of getting limestone to the Wheeling district?

MR. CORNEAU: I make the same objection to all of these questions.

THE WITNESS: The limestone rate I do not remember, but I know what you are getting at. The costs are equalized on the assembling rate of the materials entering into the pig iron.

By Mr. Severance:

Q. At the present rate?

A. At the present time. That is, they are said to be.

Q. I say, in the Youngstown district and the Pittsburgh district and the Wheeling district they are, are they not?

A. They are said to be.

Q. They are, are they not?

A. No.

Q. In what way are they not? Explain in what they are not equalized.

A. You are getting into a lot of things—

Q. You answer my questions. I will take care of that.

A. The Youngstown district pays 56 cents on ore. The Pittsburgh district, and if by that you mean the Corporation, is supposed to pay 96 cents; but they pay the cost, plus a reasonable profit.

Q. Wait a minute.

A. We are equalized on the assembling proposition, based upon a paper rate of 96 cents.

Q. Now, Mr. Moore, let us see about that. The Pittsburgh Steel Company is doing business in the Pittsburgh district, is it not?

A. Yes, sir.

Q. And they ship in some ore?

A. Yes, sir.

Q. They pay 96 cents?

A. Yes, sir.

Q. Jones & Laughlin are in this district, are they not?

A. Partly.

Q. Their plant here in the city is in this district?

A. Yes.

Q. And they pay 96 cents, less a switching charge?

A. Less a terminal allowance; yes, sir.

Q. We all understand that.

A. Yes.

Q. There are a number of people, aside from the ones I have mentioned, that are doing business in the Pittsburgh district that are not connected with the Steel Corporation?

A. That is true.

Q. And they are all paying this 96-cent rate?

A. Yes.

Q. Are they entitled to any consideration in making up rates or not? Do you think they are? Just answer that yes or no.

A. They are entitled to consideration; most decidedly.

Q. Thank you very much. This rate of 96 cents, as to those men, even on your own way of figuring, is not a paper rate, is it?

A. Not as to those people, no.

Q. And are they competitors of the Republic Iron & Steel Company?

A. Most assuredly.

Q. Assuming, then, that their charge is not a paper rate, which you say it is not, is the cost of assembling equalized as between them and you and the people in the Wheeling district?

A. As between——

Q. I am leaving the Corporation out of it, you understand.

A. You have included Jones & Laughlin in that proposition, and I say no.

Q. Because of the terminal allowance they get?

A. Because their coke rate is a paper rate.

Q. Their coke rate?

A. Yes.

Q. Where do they get their coke?

A. They get their coal by water, and coke the coal at their plant.

Q. Leave them out and put the others in, then.

A. They are our two big competitors.

Q. Will you have the goodness to answer the question? We will leave out Jones & Laughlin and the Steel Corporation, and as to the others you admit that the rates are not paper rates?

A. The others are infinitesimal.

Q. Is the Pittsburgh Steel Company infinitesimal?

A. So far as we are concerned, it is.

Q. However large or small they may be, if I could get you to answer my questions and not argue, would you say that the rates of assembling costs are equalized as between the Youngstown district and the Pittsburgh district and the Wheeling district?

A. They are equalized in the Wheeling district by making a distortion in the ore rate. The ore rate was $1.18 at one time, the same as Pittsburgh. It is now 60 cents.

Q. I am not asking why and how it is done. I am asking if, as a matter of fact, it is done.

A. It is done, but in that way.

Q. It is done, so that whether one rate is too high or low, we are not considering now. We are merely considering the question as to whether, as between these people in the Pittsburgh district, who you say have to pay the rate, and the Youngstown district and the Wheeling district, the cost of assembling is equalized.

A. It is practically so, I think.

MR. CORNEAU: With the exceptions you have named?

THE WITNESS: Exactly.

By MR. SEVERANCE:

Q. Does all of the Steel Corporation's ore come over the Bessemer & Lake Erie?

A. I understand not. 75 per cent of it.

Q. Over what other lines does it come?

A. The Pennsylvania and the P. & L. E. and the Baltimore & Ohio.

Q. Is the rate a paper rate to them on business that goes over the trunk line?

A. No.

Q. If it is not a paper rate to them, then, as to that ore, there is an equalization among these three districts, is there not?

A. Exclusive of terminal allowances; yes.

Q. Every blast furnace here gets a terminal allowance of some sort, does it not?

A. In the Pittsburgh district, yes.

Q. Every blast furnace?

A. Yes.

Q. So that, if you should consider that, that takes that much off of the rate for everybody, does it not, who runs a blast furnace?

A. In the Pittsburgh district, yes.

Q. Your complaint as to ore rates was against what railroad companies?

A. It was against the Lake Shore.

Q. Alone?

A. The Lake Shore and the Pittsburgh & Lake Erie.

Q. The Pittsburgh & Lake Erie is a Vanderbilt line, is it not?

A. Yes.

Q. And the Lake Shore is, likewise?

A. Yes. It was afterwards amended to include the Pennsylvania, I believe.

Q. The Bessemer & Lake Erie road does not reach the Valley at all, does it?

A. I would say not.

Q. There is no ore comes over the Bessemer & Lake Erie to those plants up there in the Youngstown district, is there?

A. Not to my knowledge.

Q. No. Consequently, so far as that rate is concerned, it is not a rate in which the Bessemer & Lake Erie shares to any extent?

A. Not in the item of transportation.

Q. That is what I am talking about. We are talking about transportation. I am not going to examine you about anything but transportation, and not much about that. You have admitted that you are not a manufacturing expert.

You stated, did you not, something about the great advantage to the Corporation of keeping up the Pittsburgh rate, and that that even justified keeping up the Youngstown rate, if necessary to do that?

A. I think so.

Q. Can you tell me how much iron ore is shipped into the Youngstown district from the lake ports annually by the Steel Corporation?

A. I do not remember the exact figures, but I would say that the total in there is between ten and eleven millions, and that the Corporation probably have 47 to 48 per cent. of the total.

Q. In your opinion, then, it would be four or five million tons?

MR. CORNEAU: Do you mean total capacity or total shipments?

THE WITNESS: Total capacity.

By MR. SEVERANCE:

Q. How near the total capacity do they run?

A. The last few years that has varied.

Q. I understand it varies; but between what limits?

A. I presume from 50 to 60 per cent. up to 80 or 85 per cent. At present I think it is pretty nearly 100 per cent.

Q. You would not be surprised, then, if you were told that during the last year they shipped, in round figures, 4,000,000 tons into their furnaces in that district?

A. Not at all. I would not.

Q. And on that 4,000,000 tons the Steel Corporation paid the full rate of 56 cents, the same as everybody else?

A. I suppose they did.

Q. And if that rate is too high—on which we have no light, because you do not know—assuming it is too high, they are taxed to the extent of that excess, are they not, the same as everybody else?

A. To the extent that that tonnage bears to their total tonnage.

Q. I am not asking about their total tonnage. I am talking about the total tonnage of the district.

A. That is true.

Q. Their tonnage in the district?

A. Yes.

Q. If 56 cents is 20 cents too much, if the rate should be 36 cents instead of 56 cents, and they ship 4,000,000 tons, they are being taxed $800,000 more than they should be?

A. That is self-evident.

Q. And if it is ten cents too high, they are paying $400,000 more than they should?

A. Yes.

Q. There is no doubt about that?

A. Not at all.

Q. Do you happen to know how much ore the Steel Corporation furnaces consume in the Pittsburgh district?

A. I did know. I think about in the neighborhood of thirteen or fourteen million tons.

Q. Are you sure?

A. I think so.

Q. As much as that? Would you put it as high as that?

A. I am trying to recollect. I did know, but I have forgotten. It is a large amount, anyhow.

Q. It is quite some ore?

A. Yes.

Q. There is no doubt about that?

A. No.

Q. Now, Mr. Kennedy, an expert witness who has been on the stand today—did you hear his testimony?

A. Part of it.

Q. (Continuing) Testified that the furnace capacity of the Pittsburgh district; that is, the total furnace capacity, including Aliquippa, is 15,000,000 tons.

A. Yes.

Q. Does that correspond with your recollection?

A. I would have supposed that, including Aliquippa, it was in excess of that.

Q. If it was only 15,000,000 tons it is very clear that the Corporation's capacity is not 13,000,000 or 12,000,000 or anywhere near that?

A. I cannot tell you what the exact relation to the total is there, no, sir.

Q. Then you do not know, do you?

A. No, sir.

Q. You have stated, in answer to counsel, that you had somebody make up some figures on the cost of handling ore to North Bessemer.

A. Yes.

Q. And that was 28 and a fraction cents, 24-¼ cents; and then you afterward stated that the profit or advantage enjoyed by the Corporation was the difference between 96 cents and that 28-¼ cents?

A. Correct.

MR. CORNEAU: No; in my question I said eliminating the item of profit.

MR. SEVERANCE: All right; if you did. I do not remember whether you did or not?

By MR. SEVERANCE:

Q. North Bessemer is eight or ten miles from the furnaces, is it not?

A. You mean that the Union Railroad intervenes?

Q. That is what I mean.

A. Yes.

Q. And the Union Railroad is a very expensively constructed road, is it not?

A. So I have heard a great many times.

Q. You know it, do you not?

A. I would think so.

Q. And you know that the density of the traffic on the Union Railroad is such that it had to be a very well constructed road, to handle the business?

A. I think so, yes; as it is handled.

Q. You know, as a matter of fact, that the density of traffic on that road is very great, do you not?

A. I presume it is, yes; it must be.

Q. You know that, do you not, as much as you know any of these things?

A. As well as I know any of these things.

Q. You know that as well as you know anything about railroading?

A. Yes.

Q. Why do you say that the advantage of the Steel Cor-

poration consists of the total difference between the 28-¼ cents, plus what Mr. Corneau said should be added, and the 96 cents, and leave out of consideration entirely the fact that the Union Railroad takes that traffic from North Bessemer and classifies it and hauls it across to Duquesne, a distance of seven or eight miles, hauls it down to the furnaces at Rankin, crossing the Monongahela River twice, and hauls it to the Edgar Thompson Works? Why do you eliminate that entirely? That is something that has to be done to make a delivery, is it not?

A. I do know that that is the cost to North Bessemer. The item of profit up to that point would be the difference between that and 70 cents; because there is 26 cents allowed from that point to make all these deliveries.

Q. That is what I am trying to get at. You said nothing about that 26 cents when you were testifying in answer to counsel for the Government. That is a small item that you omitted?

A. I beg your pardon. We got to figuring—

Q. But you did omit that?

A. The 96 cents can be divided into as many bites as you want, but it finally lands there.

Q. But it does not finally land there; because you testified, squarely, in answer to Mr. Corneau's question, that the Corporation's advantage consisted of the difference between the 96 cents and the 28¼ cents, plus the interest on the investment.

MR. CORNEAU: You just stated what he said.

THE WITNESS: I do not mean to pettyfog about the thing.

By MR. SEVERANCE:

Q. You also testified, in answer to counsel for the Government, that the 28¼-cent rate included the cost to North Bessemer, and Mr. Kennedy testified to the same thing?

A. Yes.

Q. You admit that you must add a fair charge for taking the traffic from North Bessemer, classifying it and delivering it to the furnaces?

A. That is a part of the cost, yes.

Q. Then your former answer was not right, was it?

A. It needs to be amended to that extent.

Q. Of course it does. Up in the Valleys, where you have your plant, the railroads spot the cars for you, do they not?

A. Yes, they do; at their expense.

Q. At their own expense?

A. Yes.

Q. So that you get a delivery right at the furnace door?

A. Yes, sir.

Q. And that is included in your 56-cent rate?

A. That is right.

Q. You testified, in answer to counsel for the Government, that the furnace capacity of the Corporation in your Valley district was only 14 per cent of their production in the country north of the Ohio River?

A. I said I thought it was about that.

Q. What has that to do with this question? What has a comparison between the consumption of ore in the Valley and the entire consumption in the North, of the Corporation, to do with the question under consideration here?

MR. CORNEAU: You are arguing with him, now, about what was running in my mind.

MR. SEVERANCE: I want an answer to the question.

THE WITNESS: I mean that, taking the Valley as a district, with the 56-cent rate, the maintenance of the 56-cent rate into that district is contingent on the maintenance of the 96-cent rate into Pittsburgh; and with only 14 per cent of their total capacity in the Valleys, they can well afford to accept a penalty on 14 per cent, if, on a large per cent, they reap an advantage, and if their competitor takes the penalty on 100 per cent.

By MR. SEVERANCE:

Q. That is a fine speech, but it has nothing whatever to do with what I am asking you.

A. Yes, it has. It is just what you were asking me.

Q. No. I asked you what the 14 per cent has to do with

it. I will make it plainer to you. You say that the rates to Pittsburgh and to the Valley are inter-related?

A. That is correct.

Q. You do not say that the rate to Chicago, the switching rate around Chicago, has any relation to the Valley rate, do you?

A. No.

Q. You know that the ships unload right at the furnaces at Gary?

A. Yes.

Q. And at the Illinois Steel Company's plant?

A. Yes.

Q. A very large part of the 100 per cent of the capacity north of the Ohio River is at Chicago?

A. Yes, and——

Q. Wait a minute. That is so, is it not?

A. That is true.

Q. Then the comparison of the 14 per cent in the Valley with the entire capacity in the North, including all that capacity in Chicago, which has no relation whatever to your rates down here, is not of any value in this case, is it?

A. You are making me try our valley ore case here, which I do not want to do.

Q. I do not care what you want to do. I want you to answer my questions.

A. It has a great deal to do with it.

Q. Explain what.

A. I will.

MR. CORNEAU: He did.

MR. SEVERANCE: No, he has not.

THE WITNESS: Our Valley rate for the assembling of material to go into a ton of pig iron includes the transportation of coke, ore and limestone. We pay $1.35 on coke to Youngstown, and the Corporation pays, on coke to South Chicago or to Gary—they did until recently—$1.95; they have a terminal allowance of 40 cents, and there we ran against the same thing again, the terminal allowance; cars delivered identically as close to the plants at the point of consumption as

they are in our district, and our delivery is performed by the railroad.

By Mr. Severance:

Q. What is that? Do you recollect that you are testifying now under oath and not arguing? Do you remember that, in connection with that last statement of yours?

(By request of counsel, the stenographer repeated the witness's last answer.)

Mr. Corneau: You are talking about terminal railroads, as I understand it.

The Witness: Yes. I am talking about terminal railroads.

Mr. Corneau: And you do realize that you are under oath?

The Witness: Yes.

Mr. Severance: I do not know whether he does or not. I hope he does.

Mr. Corneau: I thought he had that in mind. It was running in your mind that he was saying that Chicago was as near as Youngstown, I suppose.

By Mr. Severance:

Q. Now you have left us entirely in the dark as to what the 14 per cent has to do with the question.

A. Because we come in competition with the ore that is produced at the lake front, and that 14 per cent that I refer to has reference to the total production of pig iron at the lake front and other territory.

Q. But the cost of laying down ore in Chicago, the cost of laying down ore in Lorain, the cost of laying down ore in Cleveland, has nothing whatever to do with the cost of laying down ore in Pittsburgh, has it?

A. It has not.

Q. There is no relation between those?

A. No; the railroads cannot control that.

Q. No; the railroads cannot control that. That brings us right to the direct point: You have said that the rates to the Valley Points and to Pittsburgh are inter-related?

A. Yes.

Q. Therefore, if you want to make the comparison which you have made here with your 14 per cent, the comparison you should make, if it is of any value at all, would be as between the quantity of the Steel Corporation's ore moving to the Youngstown district, the Valley district, and the quantity moving to Pittsburgh, would it not? And not as against the whole consumption all over the North?

A. I do not see it that way, myself.

Q. Very good.

A. I see if from my own standpoint, very clearly, and—

Q. All right.

MR. CORNEAU: Let him finish.

MR. SEVERANCE: That is all right; I understand. He does not agree with me. That is all.

MR CORNEAU: I want to ask him about his answer back there, where he was interrupted.

MR. SEVERANCE: All right.

By MR. CORNEAU:

Q. There was an answer a little while back, where you were interrupted, and I would like to have you finish that, Mr. Moore. I refer to the point at which Mr. Severance asked you if you realized that you were under oath.

(By request, the stenographer read the answer of the witness referred to, as follows:)

"Our Valley rate for the assembling of material to go into a ton of pig iron includes the transportation of coke, ore and limestone. We pay $1.35 on coke to Youngstown, and the Corporation pays, on coke to South Chicago or to Gary—they did until recently—$1.95; they have a terminal allowance of 40 cents, and there we ran against the same thing again, the terminal allowance; cars delivered identically as close to the plants at the point of consumption as they are in our district, and our delivery is performed by the railroad."

A. I presume that is a statement that is somewhat extravagant.

MR. SEVERANCE: I thought it was.

THE WITNESS: With reference to the Chicago situation it is not an extravagant statement based upon the ability of the trunk lines to make deliveries to these points, if these plants did not interpose, first, the Chicago, Lake Shore & Eastern, which was afterwards absorbed into the E. J. & E. The Baltimore & Ohio passes the site, and so does the Lake Shore and the Pennsylvania.

Q. They go right by the Gary plant?

A. Right by it, yes.

By MR. SEVERANCE:

Q. Then you withdraw the statement that you were making at the time that I called your attention to the fact that you were testifying and not arguing?

MR. CORNEAU: That is not it.

MR. SEVERANCE: That is what I did, exactly. I called his attention to the fact that he was under oath and that he was not arguing.

By MR. SEVERANCE:

Q. You withdraw your statement that you made there with reference to your rates alongside of the plant being the same in your district?

A. Yes, to that extent.

Q. Then I accomplished, by my suggestion, all that I wanted, and got you down to the facts.

You spoke of that meeting that you asked Mr. Wood to call previous to the beginning of this proceeding, and you mentioned the fact that you were present at this meeting, and representatives of the Pennsylvania Lines, the New York Central, the Baltimore & Ohio, the Lehigh Valley, and Mr. Baird, of the Bessemer & Lake Erie. Who represented the Pennsylvania Lines at that meeting?

A. Mr. Joseph Wood was there, and Mr. McCabe, the vice-president.

Q. What is Mr. Wood's position?

A. He is the president of the Pennsylvania Lines West, now.

Q. Who represented the New York Central Lines?

A. Mr. C. F. Daly was there, and Mr. W. A. Terry.

Q. He is a western man, is he not?

A. Yes.

Q. Was anybody else there?

A. I do not remember whether they had other representatives there or not.

Q. Who represented the Baltimore & Ohio?

A. Mr. George Randolph.

Q. What is his position?

A. He is vice-president.

Q. Who else?

A. Mr. C. S. Wight.

Q. What is his position?

A. Freight traffic manager.

Q. Who represented the Lehigh Valley?

A. I think Mr. Blood was there. I would not be positive as to that. I do not know the gentleman.

Q. Anyone else?

A. The Erie were represented by their freight traffic manager, whom I know very well, but whose name escapes me just at the moment.

Q. Very well. He was the freight traffic manager. That is sufficient.

What other men were there? Was the Lackawanna represented?

A. I do not remember.

Q. Do you remember any other line that was represented?

A. I think not.

Q. You have stated that Mr. Baird was there. Did Mr. Baird have anything to say about what these rates should be, as to whether there should be a reduction or not?

A. I do not think he did.

Q. You are aware of the fact, are you not, that Mr. Wood and Mr. Orr have both testified that Mr. Baird has never had anything to do with the establishment or maintenance of ore rates? You are informed of that fact, are you not?

A. I think I have heard that, yes.

Q. And you know of nothing, do you, to induce you to con-

tradict the statement made by those gentlemen under oath to that effect?

A. I would not contradict them.

Q. How long after that meeting that you had did you receive notice from the trunk lines that they would not make the reduction?

A. I think it was about thirty days.

Q. You do not know at what meeting, held by the representatives of the trunk lines, that matter was determined, do you?

A. No, sir. We were simply advised that they had discussed the matter, and decided that there could be no reductions made.

RE-DIRECT EXAMINATION.

By Mr. Corneau:

Q. Did Mr. Orr or Mr. Wood testify in the Youngstown case?

A. We have had no testimony on the part of the railroads in our ore case as yet.

Q. Then this testimony that Mr. Severance was talking about, in which they were supposed to have said that the Bessemer & Lake Erie were not making the ore rates was in some other case?

A. Some other case; not in our case.

Q. Do you know whether or not they were speaking in reference to the rate on ore to Youngstown, or in reference to the rate on ore to some other point?

A. I do not know the language of the denial at all.

Q. In other words, it is something entirely outside of your ken, outside of your knowledge?

A. Other than the mere fact that I have heard that they have denied it.

Q. Did you ever hear that they said they had nothing to do with the making of rates to Youngstown as distinguished from Pittsburgh?

A. I can only assume that when railroad people meet by

request and bring in the interested lines, that the interested lines are there only by invitation.

MR. SEVERANCE: I move to strike out the answer as purely speculation. The witness knows nothing about the matter, as he admits. He simply shows his bias as a witness.

By MR. CORNEAU:

Q. Now, Mr. Moore, Mr. Severance asked you with reference to the extent to which the Steel Corporation would have an advantage over its competitors on a ton of steel. Assuming that the advantage, for the purpose of the question, was the difference between the cost figure of 25 cents and the old rate of 80 cents, and the amount of ore three tons, he put to you the question whether the advantage of the corporation on that assumption was $1.65 or something of that kind, and you replied in the affirmative. I wish you would please figure and see if that is right.

A. Well, it is $1.65 on their particular shipment. Of course that has to be doubled with reference to the competitors, the ore handled for the competitors.

Q. Yes; the advantage would be just twice that?

A. Yes; it would be $3.10 on the double transaction.

Q. Do you know what the furnace allowance is in the Pittsburgh District? There has been a good deal said about it during your examination.

A. The furnace allowance or terminal allowance?

Q. The furnace allowance?

A. The furnace allowance runs from $2.50, I think, on coke, to $1.50 or $1.60 on limestone. It is a per car allowance.

Q. With reference to ore, can you tell me what it is on a car of ore?

A. I think it is $1.60 or $1.75, I have forgotten the figures exactly.

Q. Do you recall whether or not it is $2.25?

MR. SEVERANCE: I object to that as leading. Here is an expert witness on railroad rates from the Pittsburgh district—

MR. CORNEAU: Do you expect any expert to carry all the rates in his mind?

THE WITNESS: I do not pretend to carry them in my head, and never expect to.

By MR. CORNEAU:

Q. All right. Mr. Severance seemed to have a great deal of difficulty in understanding the pertinency of the fact that only about 14 per cent, as you testified, of the Steel Corporation's tonnage of pig iron was produced in the Youngstown District. I wish you would see if you can make that clear by another explanation.

A. Well, they have furnaces at the lake front, Pittsburgh and the valleys, with advantages accruing in Pittsburgh and Lake territories, and to the extent that they have advantages, and to the extent that a competitor is entirely confined to the valley district, to that extent they penalize themselves only on the percentage that the valley bears to their total operation, while the competitor is penalized to the extent of 100 per cent.

Q. Mr. Severance asked you in reference to the Union Railroad and if traffic on that railroad was not so fearfully dense as to make the construction of it terribly expensive. Now, it is a fact, is it not, a generally accepted fact, that the denser the traffic the cheaper the operation?

A. I am not an operating man.

Q. Well, that is generally true, is it not?

MR. SEVERANCE: He says he is not an operating man, and therefore he should not testify, if he is not an expert.

By MR. CORNEAU:

Q. It has been brought out, I think, in your cross examination, that the Union Railroad received 26 cents out of the 96 cent rate on ore from Conneaut to Pittsburgh. It has appeared from testimony this morning, which I think you heard, that the Union Railroad has a division of ten cents with trunk lines on rates from Lake ports to Pittsburgh for delivery at furnaces on the line. Now, assuming, Mr. Moore, that the ten cents is a fair measure of the value of all the service that the Union Railroad performs, if the 16 cents were kept by the Bessemer & Lake Erie in its earnings, it would very ma-

terially decrease the ratio of operating expenses to gross earnings, would it not?

A. Most decidedly.

MR. SEVERANCE: I object to that. That is axiomatic. It is also objectionable because it is founded on an erroneous supposition.

MR. CORNEAU: It is over the same railroad, from the same point, and to the same point. Usually that is the same service.

MR. SEVERANCE: No, I beg your pardon, it is not over the same railroad from the same point to the same point.

MR. CORNEAU: I so understood him.

MR. SEVERANCE: No. You do not say that at all, do you?

THE WITNESS: No; the Union Railroad delivers at North Bessemer, and the trunk lines deliver at other points.

By MR. CORNEAU:

Q. North Bessemer is about how far from Pittsburgh?

A. Eight miles from the furnaces, I believe.

MR. SEVERANCE: Eight miles from East Pittsburgh.

By MR. CORNEAU:

Q. Do you know how these other points range?

A. The distances?

Q. Yes.

A. No. It is all covered in the terminal case, but I do not remember the distances.

RECROSS EXAMINATION,

By MR. SEVERANCE:

Q. You spoke a moment ago about the advantage that the furnaces along the Lake had. That is a perfectly legitimate advantage of location, is it not; there is nothing artificial about that, is there?

A. That is true.

Q. Not only the Steel Corporation, but many other people have furnaces along the lakes; is not that true?

A. Yes, sir. They have terminal allowances also which

the railroads could control. In other words, they are given advantages by reason of terminal allowances on the raw materials which do have to be handled by rail, despite the fact that their ore comes by water, and despite the fact in the valley district we are put on a plane where a high rate is assessed on coke to offset the low rate that is made on ore to Wheeling.

Q. How much too high is the rate on coke? You say it is a high rate. How much too high is it?

A. Well, to the extent that 22 cents plus a reasonable cost is less than $1.35.

Q. No, I ask you in figures.

A. I have not made a figure for coke. Mr. Muller in his exhibit has given what he calls constructive rates. They are rates based—

Q. (Interposing). How much is it?

A. I do not remember.

Q. You have been testifying about Mr. Muller all the time. You have given all the figures that you have given as from Mr. Muller.

A. Yes.

Q. Well, how much is the coke rate too high up there; what did Mr. Muller say about it?

A. Do you want Mr. Muller's constructive rate?

Q. Yes; what did Mr. Muller say about it? We have got nothing but Muller, so far as we have had any figures at all.

A. Well, I do not know. I would be ashamed—I think it is about 65 cents.

Q. How much was Mr. Muller's rate on ore?

A. Mr. Muller's rate on ore is about 40 cents.

Q. Do you agree with Mr. Muller?

A. I think he is reasonable, yes.

Q. Then at last I have gotten an answer to that.

A. That is all right. That is not my answer.

Q. Well, you say you agree with Mr. Muller. I am very much obliged, Mr. Moore. I am sorry I had to try so long and could not get anything before.

A. Well, I still contend that I have not expressed a personal opinion as to what the rate should be.

Q. You have no opinion on the subject?

A. No; I want the Commission to have an opinion.

Q. But you have none yourself, have you; is that right?

A. What?

Q. You have no opinion on the subject?

A. Yes; I have.

MR. SEVERANCE: That is all.

By MR. CORNEAU:

Q. Mr. Severance asked you if the furnaces of the Corporation on the Lake were entitled to the advantages of their location, and whether it was not right and just that they should have those advantages. What about Youngstown; do you have the advantage of your location there, in so far as there are any advantages of location, and what about Pittsburgh?

A. I think they do not.

By MR. SEVERANCE:

Q. In what particular do you not have the advantage of location?

A. They are not given the advantage of the density of the traffic which they have originated.

Q. Will you tell me to what extent they have not been given that advantage, and the particulars? It is easy to make general statements, but tell me the particulars in which they are not getting their natural advantages?

A. As I said, the coke rate of $1.35——

Q. Well, how much should it be?

A. Mr. Muller's figures are——

Q. I am talking to Mr. Moore now, and not Mr. Muller——

A. (Continuing) 65 cents, as a constructive rate. He submitted that to the Commission.

Q. And if the rate on coke is reduced to 65 cents it will inure to the benefit of the furnaces in the Youngstown District?

A. Yes.

Q. And will be gratefully received, no doubt?

A. Yes.

Q. What is the fair rate on limestone?

A. It was twenty cents. It is now thirty-five cents.

Q. What would be fair—20 cents?

A. I will let you judge for yourself. They handle eighty cars, 50 tons to the car, 4,000 tons, about 11 miles with a switch engine, and they charge 35 cents a ton.

Q. If that is reduced——

A. (Interrupting) If you reduce it to a reasonable figure it is a switch charge.

Q. And the Steel Corporation will get the advantage of that as to all of its limestone?

A. Yes; and they are entitled to it.

Q. And therefore, as far as you can see, in all that Youngstown District the Steel Corporation is being pretty badly treated, with high rates on ore, with high rates on coke, and with high rates on limestone?

A. Yes. I only wonder that they do not complain the same as we do.

MR. SEVERANCE: That is all.

MR. CORNEAU: The bad treatment is on the same old 14%?

A. Yes.

(Thereupon an adjournment was taken until tomorrow, Thursday, October 10th, 1912, at 10:30 o'clock a. m.)

TWENTY-NINTH DAY.

ROOM 309 FEDERAL BUILDING,
PITTSBURGH, PENNSYLVANIA,

October 10, 1912.

The hearing was resumed at 10:30 o'clock a. m., before Special Examiner John A. Brown.

Present on behalf of the United States, Mr. Dickinson, Mr. Colton and Mr. Corneau.

Present on behalf of the defendants, Mr. Lindabury, Mr. Severance, Mr. Bolling and Mr. Reed.

A. R. KENNEDY,

having been heretofore duly sworn, was recalled as a witness and testified as follows:

RE-DIRECT EXAMINATION,

By MR. CORNEAU:

Q. Mr. Kennedy, in looking over the transcript I find that I asked you this question, as it is reported in the transcript——

MR. SEVERANCE: What page?

MR. CORNEAU: Page 4296. (Reading):

"Q. After all of your investigations, Mr. Kennedy, are you able to state any reason justifying a higher rate to Pittsburgh over the Bessemer & Lake Erie and the other lines serving that territory from Lake ports than is made to other furnace points nearer in distance to the Lake ports?"

MR. SEVERANCE: That is evidently a mistake. You mean "farther."

MR. CORNEAU: Yes.

MR. SEVERANCE: If you will look at the next page, you will

see that he answered it with the correct understanding of your question.

MR. CORNEAU: I so understood. I just wanted to clear the record.

MR. SEVERANCE: That is all right. Just change that. I noticed it.

By MR. CORNEAU:

Q. You were asked on cross examination by Mr. Severance, at page 4316, if you did not know, as a matter of fact, that the Central Freight Association has nothing whatever to do with fixing rates or classifications upon ore, limestone or coke. You answered: "I do know that, yes."

Do you know whether or not any association or committee or other body of railroad men does have to do with the matter of fixing rates and classifications upon ore?

A. I have been told——

MR. SEVERANCE: I object to any hearsay testimony from this witness. We had enough yesterday. If he merely knows what he has been told, I object to his testifying to it.

MR. CORNEAU: If you do not know, we will let it go at that.

THE WITNESS: I do not know authentically, no sir.

By MR. CORNEAU:

Q. You declined, yesterday, to name the person who told you something with reference to the Bessemer & Lake Erie's membership in the Trunk Line Association, I think.

MR. SEVERANCE: At what page?

MR. CORNEAU: Page 4318.

By MR. CORNEAU:

Q. Do you care to make any explanation of why you declined?

A. It would not be for the best interests of the man that told me, or the several men that told me. It would not help their positions much.

MR. SEVERANCE: Do you think that is very nice, to have that come into the record, Mr. Corneau? Did you know that he was going to say that?

MR. CORNEAU: I rather thought he was, yes. Why?

MR. SEVERANCE: All right.

MR. CORNEAU: He so testified down in Washington, as you will see if you look at the transcript.

By MR. CORNEAU:

Q. On page 4324 of the transcript of yesterday's evidence, speaking with reference to the hauling over the D., M. & N.——

MR. SEVERANCE: Before you put another question I want to move to strike out of the record the answer just given and the answer that he gave yesterday, a reference to which I cannot give at the moment, in which he stated as a fact that the Bessemer & Lake Erie was a memeber of the association in question, on the ground not only that it is hearsay, but that the witness declined to give even the source of his information.

MR. CORNEAU: I do not know just what the first answer is of which you speak, that you want stricken out.

MR. SEVERANCE: The one he just gave.

MR. CORNEAU: His explanation?

MR. SEVERANCE: Yes; his explanation.

MR. CORNEAU: My only purpose in asking that question, Mr. Severance, was to see whether or not he himself had any personal grounds for declining to answer, or whether it was merely his conception of the way he should act with reference to others.

MR. SEVERANCE: You understand, Mr. Corneau, how very helpless we are here. We have nobody to rule, and you can fill up the record with that sort of stuff containing inferences, as though this man were a martyr to principle, or something like that, instead of being what he is.

MR. CORNEAU: I object to that statement, "instead of being what he is." Let us get back to the question.

By MR. CORNEAU:

Q. At page 4324 of the transcript of yesterday's evidence, speaking with reference to the haul on the D., M. & N., you were asked this question by Mr. Severance:

"And that involves, then, instead of a haul on the average of 78 miles over the D., M. & N., a loaded haul of 78 miles and an empty haul of 78 miles on the same car?"

To which you answered:

"Practically so, yes, sir."

Do you know whether or not that same thing is true in the case of the movement of ore from the Michigan ranges to the points served by those roads?

A. I would answer in the same manner, practically so.

Q. You were also asked by Mr. Severance whether or not the ore business of the Duluth & Iron Range and Duluth, Missabe & Northern was all the year round business, and you answered: "No, sir." Do you know whether or not the ore business of the Michigan roads is all the year round business?

A. About the same period of the year; yes, sir; about seven months.

Q. At page 4326, speaking with reference to the length of haul of ore over the D., M. & N., Mr. Severance asked you this question:

"The mines that were covered by the Hill lease, from which a great amount of this ore is taken, which is moved down to Duluth, are over in the vicinity of Coleraine, are they not?"

To which you answered:

"I could not testify to that."

Do you happen to know whether or not, under the terms of the Hill lease, all the ore mined under that lease was required to be shipped over the Great Northern Railway?

MR. SEVERANCE: May I ask a question before he answers that?

MR. CORNEAU: Yes.

By MR. SEVERANCE:

Q. That lease is in writing, is it not? Or do you not know?

A. I do not know whether it is or not.

Q. Did you ever see it?

A. No, sir; I did not see the lease.

MR. SEVERANCE: I object to the witness' answer on the

ground that any testimony he would give in the matter would be mere hearsay.

MR. LINDABURY: Has not the Hill lease already been put in evidence?

MR. CORNEAU: You will hardly dispute that that is a fact, will you? I will withdraw the question.

By MR. CORNEAU:

Q. At page 4330 I find that Mr. Severance asked you this question with reference to what was embraced in the figured cost of 28¼ cents for the movement of ore from Conneaut to North Bessemer:

"Q. Maintenance charges have nothing to do with the cost for conducting transportation.

"A. I appreciate that.

"Q. They have nothing to do with the movement. Therefore that 28¼ cents a ton does not include anything but the movement.

"A. That is the way this report reads, yes, sir."

I wish you would look at the report, if you have it before you.

MR. SEVERANCE: I object to the witness reading anything from this report. I asked him nothing about any report. That was a voluntary statement on his part as to what a report showed. The report was not made up by him, and it is hearsay.

THE WITNESS: Shall I answer?

MR. CORNEAU: Yes.

THE WITNESS: I have looked over the report since yesterday, and in analyzing it, I find 28¼ cents per ton does cover the maintenance cost.

By MR. CORNEAU:

Q. At page 4334 of the record, speaking with reference to your testimony before the Interstate Commerce Commission in your ore case, Mr. Severance asked you this question:

"Q. You testified there, not to 28¼ cents, but you testified that it was only 26 cents, did you not?

"A. Yes, sir."

Did you or not, at the time you testified in your ore case before the Interstate Commerce Commission, explain where you got that 26 cents, and what it was?

A. I explained it in the ore case; yes, sir.

Q. I do not happen to have the reference to that, but I have a copy of your testimony here. I wish you would see if you can find that, if it does not take too long. (Handing witness book of testimony).

A. Glance right through those pages there (indicating in book of testimony).

Q. At page 275 of the transcript of the record in that ore case, I will begin to read and ask you if you were asked——

MR. SEVERANCE: Just a moment.

MR. CORNEAU: I thought I would go at it as you did yesterday.

MR. SEVERANCE: But I was cross examining the witness.

MR. CORNEAU: And I am examining him on re-direct examination.

MR. SEVERANCE: I desire to object to the witness reading from the record and thereby informing himself as to what he should testify to in this case. He has no right to do that, and counsel has no right to lead the witness in that way.

MR. CORNEAU: The manner in which the matter was left yesterday was such as to warrant the inference that this witness had himself arrived at two different conclusions. I think that in justification of the witness it is proper to show all that he said on that subject.

By MR. CORNEAU:

Q. I will ask you if at that time you were asked this question and made this answer——

MR. SEVERANCE: I make the same objection to the reading of anything from that record, to refresh the recollection of the witness.

MR. CORNEAU: I will meet that objection beforehand. I will withdraw that question for the moment.

By Mr. Corneau:

Q. Mr. Kennedy, will you explain just what else you said with reference to that 26-cent cost at the ore hearing before the Interstate Commerce Commission, with reference to how you arrived at it?

A. My recollection is that at that hearing I said a 26-cent cost for handling ore from Conneaut Harbor to North Bessemer by the Bessemer & Lake Erie Road was based on an investigation made by Senator Oliver, and given in testimony in the Stanley hearing. Also based on the general manager's report of the Bessemer & Lake Erie Road for 1910, a copy of which our counsel has. I am not so sure, but I think I mentioned Mr. Freer's name quoting the same rate, as being the cost of the service, in the testimony before the Stanley Investigating Committee.

Q. At that time were you asked the questions and did you make the answers as follows:

Mr. Severance: I object to counsel reading any testimony of the witness given on some other occasion, as an endeavor to show by some declaration in his own interest, something in support of the testimony here given, and as leading, incompetent and irrelevant. This is not cross examination.

Mr. Corneau: In view of the objection, I will put this question to you instead.

By Mr. Corneau:

Q. Did or did not Mr. Severance, when he was reading to you excerpts from your testimony, read all that you testified on that subject?

Mr. Severance: If you know.

Q. (Continuing). According to your best recollection.

A. My recollection is that he did; yes, sir.

By Mr. Corneau:

Q. At page 4346 of the transcript of yesterday's proceedings this question and answer appear:

"Q. Is it not a fact, sir, that last year the ore tonnage of the Corporation works, as follows, the Ohio Works at Youngstown, the New Castle works, North Sharon, South

Sharon, Niles furnace—those are the Valley plants of the Steel Corporation?

"A. Yes.

"Q. (Continuing) Amounted to 3,972,000 tons; while the tonnage to the Youngstown Sheet & Tube Company and the Republic Iron & Steel Company, the competitors in the Valleys, amounted to 2,239,000 tons annually?

"A. I cannot answer that."

Q. Can you state generally whether or not there are other competitors of the Steel Corporation using ore in the Valleys than the Youngstown Sheet & Tube Company and the Republic Iron & Steel Company?

A. I think there are a great many others; yes, sir.

Q. Can you name some of them?

A. The Shenango Furnace Company; the Brier Hill Iron & Steel Company. I cannot recollect any more, but I think there are a whole lot more.

Q. Do you know about the number of blast furnaces in that district?

A. My recollection is that there are 43.

Q. Do you know about how many of them are owned by the Steel Corporation?

A. As near as I can recollect, about twelve or thirteen.

Q. Do you know how many the Republic Iron & Steel Comapny has?

A. I believe they have four.

Q. Do you know how many the Youngstown Sheet & Tube Company has?

A. Three; to my knowledge they have three.

Q. That is somewhere from twenty to twenty-three blast furnaces belonging to the three concerns mentioned by Mr. Severance, then; 12 to 15 belonging to the corporation, four and three to the others respectively?

MR. SEVERANCE: That is a matter of addition.

A. In that neighborhood.

By MR. CORNEAU:

Q. So that there would be remaining some twenty-three blast furnaces that Mr. Severance did not take into account

in computing the 2,239,000 tons consumed by the competitors in the Valley? Is that right?

A. Yes, sir.

MR. SEVERANCE: Read the next question and you will see that he stated that those were the chief competitors—those two; the largest.

MR. CORNEAU: Yes; I recollect, after I had made this statement.

"MR. CORNEAU: Do I understand you to state that those two are the only competitors in the Valleys, Mr. Severance?"

MR. SEVERANCE: I did not say they were, did not suppose they were, and knew they were not.

MR. CORNEAU: Your statement was, "the competitors in the Valleys."

By MR. CORNEAU:

Q. At page 4363, after showing what points were nearest, this occurs:

"A. Warren is the nearest, by the way.

"Q. What is the distance?

"A. Forty-four miles.

"Q. And the 56-cent rate applies, does it?

"A. Yes, sir.

"Q. How far is Youngstown?

"A. Fifty-nine miles.

"Q. Then you get almost a cent a ton a mile up to Youngstown?

"A. Yes, sir.

"Q. Youngstown, then, is eight miles nearer than the average, which is 66.9?

"A. Seven miles, practically.

"Q. Well, about eight miles nearer. Is it not a fact that Youngstown is the point of largest consumption in that district?

"A. Youngstown, Struthers, Haselton and Brier Hill are right together, within a few miles."

State whether or not the distances that were there re-

ferred to were the distances from the nearest points to Youngstown.

A. I will answer that by giving the actual mileages from the port to each town.

Q. Very well.

A. Into Lowellville——

MR. SEVERANCE: What plant is there at Lowellville?

THE WITNESS: The Ohio Iron & Steel Company, with one furnace. (Continuing) Into Lowellville.

From Ashtabula, 67.4 miles, via Pennsylvania Lines.

Struthers, from Ashtabula, 64.2 miles, via the Pennsylvania.

Haselton, 62.2 miles from Ashtabula via Pennsylvania Lines.

Youngstown 59.2 miles from Ashtabula via Pennsylvania Lines.

Brier Hill, 56.7 miles from Ashtabula via Pennsylvania Lines.

Girard, Ohio, from Ashtabula, 54.3 miles, via Pennsylvania Lines.

Niles, Ohio, from Ashtabula, 49.7 miles via Pennsylvania Lines.

Warren, Ohio, from Ashtabula, via Pennsylvania lines, 44.5 miles.

New Castle, Pennsylvania, from Erie, Pennsylvania, 96 miles, via Pennsylvania Lines.

West Middlesex, Pennsylvania, from Erie, Pennsylvania, 81 miles.

Wheatland, Pennsylvania, from Erie, Pennsylvania, via Pennsylvania Lines, 78.8 miles.

To South Sharon, Pennsylvania, from Erie, Pennsylvania, via Pennsylvania Lines, 76.7 miles.

Q. Without going into the details, what I want to get at is this: Whether or not the assumption which seemed to be involved in Mr. Severance's question, that all the ore into a particular district would move over the shortest route from the nearest port was a correct assumption.

A. No, sir; it was not.

Q. You were asked, at page 4367, about furnace allowances. I wish you would just state what the furnace allowance is in the Pittsburgh District, if you know.

A. The allowance to blast furnaces within the Pittsburgh District by the trunk lines on iron ore is $2.25 per car; coke, $1.75 per car; and limestone, $1.60 per car.

Q. At page 4384 of the transcript of yesterday's proceedings, you were asked this question:

"Have you ever filed a complaint with the Interstate Commerce Commission before?"

That is, before the complaint which has been under discussion here; and you answered:

"A. On ore rates?

"Q. Yes.

"A. No, sir."

Will you just state the reason for filing the complaint at this time?

MR. SEVERANCE: I object to that as immaterial.

MR. CORNEAU: You were trying to show something there; I do not know just what; I think, however, we might as well find out what the reason was.

THE WITNESS: The purpose in filing the complaint was, naturally, to get the advantage, if any reduction was to be made, in the ore rates by the Commission or the railroads, in view of our new furnace operation.

By MR. CORNEAU:

Q. Just tell us a little about that.

MR. SEVERANCE: He does not know about that.

MR. CORNEAU: He may have learned something about it.

MR. SEVERANCE: Over night?

MR. CORNEAU: No; at the time of his ore investigation.

THE WITNESS: We hope to have our blast furnaces in operation, at least one of them, by March 1, and the other shortly after, next year.

By Mr. Corneau:

Q. Would or would not that make a very material difference in the amount of ore you would use?

A. I should say it would. We will then use approximately 600,000 tons a year.

Q. You were asked some questions at pages 4392 and 4393, with reference to the Lake Terminal Railway at Loraine. Can you tell me the nature of the service performed by that road in general, in addition to hauling this ore from the docks to connecting lines?

A. It serves the plants of the National Tube Company which I understand owns the railroad, in addition to serving the ore docks.

Q. What is the situation of the Newberg & South Shore?

A. It is in the same position as the Lake Terminal Railroad. It serves the American Steel & Wire Company plants at Cleveland in a like manner that the Lake Terminal serves the National Tube Company.

Mr. Corneau: I think that is all.

RECROSS EXAMINATION,

By Mr. Severance:

Q. Do you realize the import of your last answer, Mr. Kennedy, that the Newburg & South Shore serves the American Steel & Wire Company plants at Cleveland, in the same manner that the Lake Terminal serves the tube works at Loraine? Do you mean to say that?

A. Practically so, yes.

Q. You do?

A. The grades are different, and that sort of thing, and the interchange points—

Q. Just a moment. I am not talking about the movement in connection with the trunk lines. You were asked whether, in addition to that, they did not do something else, and you said they served the plants. You also stated they served them in the same manner.

A. Practically so.

Q. Do you know those two lines at all?

A. Yes, sir.

Q. You do?

A. Yes.

Q. How far is it from the plant of the American Steel & Wire Company in Cleveland, where the blast furnaces are located, to the plant of the American Steel & Wire Company at Newburg?

A. I would say about two miles.

Q. Two miles?

A. A mile and a half to two miles.

Q. Is it?

A. Yes.

Q. Would you be surprised to know that it is seven miles from one plant to the other, and that that was fully developed in the Terminal Hearing, and that you were present representing that company?

A. Indeed I was not, anything of the kind. You are mistaken on that.

Q. You appeared before Commissioner Harlan in the Terminal Investigation?

A. I was not present at the hearing of the Newburg & South Shore testimony. Please correct your mind on that.

Q. Would it surprise you to know that it was there testified, and not disputed, and shown by the maps, that it is seven miles from one of those plants to the other?

A. I would not dispute it, no sir.

Q. Why did you say it is a mile and a half to two miles, then? You do not know anything about it?

A. That is my best observation of it.

Q. You do not know anything about it?

A. I know something about it.

Q. You do not know that any better than you know the growth of the Pittsburgh Steel Company?

A. That is a matter of a difference of opinion.

MR. CORNEAU: I object to that.

By Mr. Severance:

Q. If it seven miles from the blast furnaces down to the river, to the American Steel & Wire Works at Newburg and these two plants are connected by the Newburg & South Shore, there is certainly a very considerable difference between the character of service performed for the works there and at Loraine, is there not?

Mr. Corneau: Do you mean between the character of the service or the amount? Which do you mean?

Mr. Severance: The character.

The Witness: There is in distance only.

By Mr. Severance:

Q. As a matter of fact, is hot metal transported at all at Loraine?

A. No, sir.

Q. By the Lake Terminal?

A. No, sir.

Q. Is not that metal, as a matter of fact, in large quantity transported by the Newburg & South Shore from the blast furnace on the river to Newburg Works, seven miles away?

A. Yes, sir. Plant facility works.

Mr. Severance: I did not ask you to characterize it, as to whether it is one thing or another. That is a voluntary statement, and I move to strike it out. You were not asked to characterize anything, but merely to answer the questions put to you, which you sometimes do and sometimes do not.

By Mr. Severance:

Q. The whole question of the relations of the terminal lines at Loraine, Cleveland, and in the Pittsburgh district, and at Wheeling, is under investigation, is it not?

A. Yes, sir.

Q. By the Interstate Commerce Commission, which has jurisdiction over those matters?

A. I understood so; yes, sir.

MR. CORNEAU: I object to that question as wholly irrelevant and immaterial.

MR. SEVERANCE: I am showing that those are to be tried out where they are properly cognizable.

By MR. SEVERANCE:

Q. And in that investigation, when it was in session here in Pittsburgh, you appeared and gave testimony relative to the tracks around the plant of the Pittsburgh Steel Company, did you not?

A. Yes, sir.

Q. You said in answer to counsel a moment ago that all blast furnaces in the Pittsburgh district receive an allowance of $2.25 on ore, $1.75 on coke and $1.60 on limestone, as I understood you.

A. That is my recollection of the allowance; yes, sir.

Q. Do you think that statement is accurate?

A. The published tariff rates.

Q. Do any blast furnaces that are located on the lines of the Union Railroad——

A. (Interrupting) With that exception, and the Jones & Laughlin line.

Q. Well, you did not except them in answer to counsel——

A. That is generally known by counsel on both sides, is it not?

Q. I do not know. You are testifying here under oath.

A. I will make those two exceptions. Those two lines get ten cents a ton from the trunk line.

MR. CORNEAU: May I ask one question here? What is the difference between that ten cents a ton and the $2.25 a car?

MR. SEVERANCE: He does not know about it.

THE WITNESS: The difference is about four cents a ton in favor of the Union Railroad and the Monongahela Connecting Railroad.

By MR. SEVERANCE:

Q. That is, in revenue?

A. In the allowance.

Q. In the revenue received?

A. In the allowance they receive.

Q. Do you know what "revenue" means?

A. Yes.

Q. Well, I ask you if you mean that it is four cents difference in the work done by the Union Railroad over the amount done by these small roads connected up by the blast furnaces.

A. Yes, sir.

Q. Say so, then.

A. I think I did say so.

Q. No, you did not.

In the course of your voluminous investigation into conditions here, have you ascertained how much ore is received by the furnaces of the Steel Corporation, subsidiaries of the Steel Corporation, in the Pittsburgh district, going over trunk lines other than the Bessemer & Lake Erie?

A. Is received?

Q. Yes.

A. I have not.

Q. You would not be surprised—you spoke about being surprised yesterday—if it amounted to between 3,000,000 and 4,000,000 tons?

A. No, I would not be surprised. That is about what I approximated it. That would be under full operation, of course.

Q. On all that tonnage coming in over the trunk lines the Steel Corporation pays the regular rate, does it not?

A. Yes, sir; less the terminal allowance.

Q. Less the terminal allowance?

A. Yes.

Q. And the other blast furnaces in the district that are disconnected from the Corporation, as you stated, receive the terminal allowance?

A. Yes, sir.

Q. Then a reduction in the rates from the lake ports to the Pittsburgh district would benefit the Corporation on all of that ore that comes in over the Pennsylvania, the Pittsburgh & Lake Erie or the Wheeling and Lake Erie, to the extent of such reduction, would it not?

A. To the plants where they make pig iron only, yes, sir.

MR. SEVERANCE: Read the question.

(The stenographer repeated the question as above recorded.)

By MR. SEVERANCE:

Q. That is true, is it not?

A. To the plants where they make pig iron, with one exception——

Q. What difference does it make what they do with it, if they ship in ore under a reduced rate over the trunk lines, they will pay that much less freight, will they not?

A. That is true; yes, sir.

Q. That is all I asked you.

A. All right.

Q. I did not ask you anything about where it is consumed. If the rates are reduced into the Valleys, as prayed for in the petition of the Republic Iron & Steel Company and others, the Steel Corporation on all of its ore moving into that territory will benefit to the same extent as other shippers, will it not?

A. I should imagine so; yes, sir.

MR. SEVERANCE: That is all.

By MR. CORNEAU:

Q. Mr. Kennedy, although on the ore shipped to furnaces not located on the lines of the Union Railroad, it would benefit the Corporation to the extent of such ore to have the rate to Pittsburgh reduced, what would be the effect upon the Corporation with respect to the ore coming over the Bessemer & Lake Erie?

A. The effect would be that to whatever extent the rate was reduced on the Bessemer & Lake Erie, which would naturally be the rate published by other lines, the Corporation would lose just that much profit on the ore hauled to the plants of the Steel Trust.

Q. I believe you stated on your direct examination about what the comparative tonnages were, going on the one hand

over the Bessemer & Lake Erie to the Corporation plants, and over the trunk lines to the Corporation plants. I do not care to have it re-stated. I think you stated that?

A. Yes, sir, I think I stated that yesterday. That is my recollection.

Q. Did the Steel Corporation join in your complaint or is it cooperating with you in your complaint with reference to ore rates to Pittsburgh?

A. No, sir.

By Mr. Severance:

Q. If the Republic Iron & Steel Company and its associates are successful in their litigation before the Interstate Commerce Commission and secure a reduction in the rates on ore to the Valleys, the Steel Corporation will share in the benefit of that reduction to the extent of its shipments of ore to the Valleys, will it not?

A. Yes, sir.

Q. Because it has to pay out the freight to trunk lines that are not affiliated with it?

A. Yes, sir.

Q. If the Pittsburgh Steel Company is successful in its litigation before the Interstate Commerce Commission and secures a reduction in the ore rate from the lake ports to the Pittsburgh district, the Steel Corporation, or the subsidiaries of that Corporation, will share in the benefits of that reduction upon all the ore, which you say you think amounts to between three and four million tons, which it ships from lake ports into the Pittsburgh district over trunk lines other than the Bessemer & Lake Erie?

A. That is correct; yes, sir.

Q. The Bessemer & Lake Erie belongs ultimately to the Corporation, does it not?

A. Yes.

Q. It belongs to the Corporation, we will say?

A. Yes, sir.

Q. The furnaces at which the ore coming over the Bessemer & Lake Erie is consumed belong to the Corporation?

A. Yes, sir.

Q. Then whatever change is created in the reduction of that

rate, if the Bessemer & Lake Erie puts in the same rate as the trunk lines, it would amount to this; that the earnings of the Bessemer would be diminished to the extent of that reduction; and the expenditures of the subsidiary company, the Carnegie Steel or whatever it may be, also owned by the Corporation, would be diminished to the same extent?

A. They would make less profit, yes.

Q. No, that is not what I asked you, and that is not so. Just let me call your attention to the facts. If the published rate is reduced and the Bessemer & Lake Erie publish the same rate that the trunk lines are compelled to publish, as the result of the successful litigation on your part, assuming that you are successful—

THE WITNESS: Thank you.

Q. (Continuing) Then the earnings shown, to the Bessemer & Lake Erie on ore, would be diminished the same number of cents per ton as the earnings of the trunk lines handling ore to the Pittsburgh district, would they not?

A. If it cost them the same to handle it.

Q. No, no, no—I mean the gross earnings.

A. Yes, sir. You did not say that.

Q. The same reduction per ton, if they publish the same rate?

A. Exactly.

Q. That ore is consigned to another subsidiary of the Steel Corporation, as you say all the ore coming over the Bessemer & Lake Erie goes to the subsidiaries of the Steel Corporation.

A. Yes.

Q. Now, the result to that other subsidiary, the consuming subsidiary, would be that the amount it pays out for freight would be reduced to the same extent as the earnings of the Bessemer & Lake Erie were reduced; is not that true?

A. Yes, sir; that is correct. That is what we want.

Q. Yes. Well, that might be a good thing all around, I do not know. Instead of having you characterize it, I want to get the facts on the record; that is all. The Court can determine the effect.

MR. DICKINSON: Will you read that last question and answer?

(The stenographer repeated the last question and answer as above recorded.)

MR. DICKINSON: You mean proportionately?

MR. SEVERANCE: Yes, per ton. I simply want to have it concretely stated. That is the net result of all he has said.

MR. CORNEAU: Except you misapprehend the point.

MR. SEVERANCE: The point is for the Court and not for the witness. The facts are for the witness, and not the conclusions.

By MR. CORNEAU:

Q. Assuming that the actual cost of operation over the Bessemer & Lake Erie remains the same, although the rate was reduced, its advantage as against the competitor who had to pay a trunk line would be greater as the rate the competitor had to pay would be greater, would it not?

MR. SEVERANCE: Objected to as a conclusion and as incompetent. That is a matter for the Court. The facts are all in the record now, and the Court can determine the effect and not this witness.

By MR. CORNEAU:

Q. Now will you answer the question?

A. Will you read the question?

(The stenographer repeated the question as above recorded.)

A. I believe that is correct.

By MR. CORNEAU:

Q. In other words, if I understood your explanation correctly, it was this: that such advantage as the Corporation had in the matter of transportation by reason of owning the Bessemer & Lake Erie was that the competitors had to pay out to the trunk lines the full rate, while the Corporation got it for cost of service, plus a resaonable return on the service?

A. Yes, sir.

By Mr. Severance:

Q. That is true in so far as the ore moving over the Bessemer is concerned?

A. The percentage of the ore that moves over the Bessemer.

Q. That is your view?

A. Yes.

Q. But you do not claim that the Corporation has any advantage whatever over its competitors either in the Valleys or the Pittsburgh district on ore that moves over the other trunk lines?

A. I am not talking about the Valleys at all——

Q. I am, though.

A. What advantage they have in lower rates in the Valleys——

Q. (Interposing) I am talking about it. You are supposed to answer my questions.

A. I cannot answer about the Valleys.

Q. It is very difficult to get you to answer questions——

A. (Interrupting) In your way, possibly——

Mr. Severance: I think, upon reflection, I will cut out the question and let it go. You have already stated that once. No further questions.

THOMAS W. FITCH,

a witness called by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Mr. Fitch, where do you reside?

A. Crafton, a suburb of Pittsburgh.

Q. What is your age?

A. 69.

Q. If you are engaged in any present business, please state what it is.

A. I am president of the Columbia Steel & Shafting Company, manufacturing shafting shapes.

Q. How long have you been president of that company?

A. I have been president of that company two years; general manager since 1900.

Q. Prior to 1886 were you associated with Messrs. Edenborn, Gates and Clifford in the St. Louis Wire Mill Company?

A. Yes, sir.

Q. State whether or not you had anything to do with building a wire mill at Rankin, Pennsylvania, and if so at what time, and what company built it.

A. The site was bought in 1885, and the works designed and building begun at once. We started running in 1886.

Q. What company?

A. The Braddock Wire Company.

Q. Was that property sold, and if so to whom?

A. It was sold to the Braddock Wire Company.

Q. Was it ever sold to the Consolidated Steel & Wire Company?

A. The Consolidated Steel & Wire Company became connected with it many years afterwards.

Q. When?

A. About 1890.

Q. Connected in what way?

A. By a merger with the St. Louis Wire Mill Company, and then the name Consolidated Steel & Wire Company was given to both companies.

Q. Did you have anything to do with building a plant in 1889, at Braddock, Pennsylvania?

A. Yes, sir.

Q. What kind of a plant was that?

A. That was a plant similar to the one at Rankin, and named the Pittsburgh Wire Company.

Q. Was that plant sold, and if so, to whom?

A. It was sold in 1898 to John W. Gates and his associates.

Q. Was that before or after the formation of the American Steel & Wire Company of New Jersey?

A. It was before the formation of the American Steel & Wire Company.

Q. Who were those associates?

A. John W. Gates, William Edenborn, John Lambert, Arthur Clifford, Isaac L. Ellwood, Willis H. Rowe.

Q. Did they buy the property, or did they buy the stock of the company?

A. They bought the capital stock of the company from the individual stockholders.

Q. What was manufactured at the Braddock plant of the Pittsburgh Wire Company? What did they make?

A. Wire rods and wire nails.

Q. Where did they sell those products? In what part of the country?

A. In nearly all parts of the country, but mostly east.

Q. Generally throughout the United States?

A. Yes, sir.

Q. State whether or not those products were sold in competition, in interstate commerce, with the companies that were under the control of Gates and his associates.

A. At that time, yes sir.

Q. What other companies outside of those at that time controlled by Gates and his associates did this Braddock plant sell those things in competition with?

A. Mostly with the wire rod mills at that time.

Q. Those were at that time generally in existence?

A. They were generally in existence at that time.

MR. LINDABURY: He competed with rod mills generally?

THE WITNESS: Yes; with rod mills generally and nail mills generally, and plain wire mills generally.

By MR. DICKINSON:

Q. State whether or not there was a nail pool in 1896.

A. Yes, sir.

Q. Did the Pittsburgh Wire Company, during that time, make or lose money in the manufacture and sale of nails?

A. It made money.

Q. Did the existence of that pool affect the prices, and if so, how?

A. It did, by lending stability to the price at that time. There was not the competition, because the prices were maintained under the pool.

Q. Compared with the prices that existed before the organization of the pool, were they higher or lower?

A. They were higher.

Q. Do you mean the prices under the pool were higher than those that existed before the formation of the pool?

A. Yes, sir. I might add that that was the reason for the formation of the pool, to make the price higher, because there was destructive competition at that time.

Q. And did it effect the object of the formation of the pool?

A. Yes, sir.

Q. If, Mr. Fitch, prior to the time the Pittsburgh Wire Company was sold to the American Steel & Wire Company of New Jersey that company bought any barbed wire, machines for the purpose of manufacturing barbed wire, state when they got them if they did get them, and how many and whether they established a barbed wire plant for the purpose of making barbed wire.

A. You mean the Pittsburgh Wire Company? Has that reference to the Pittsburgh Wire Company?

Q. The Pittsburgh Wire Company.

A. Yes. The Pittsburgh Wire Company, had bought some second hand barbed wire machines with the intention of establishing a barbed wire plant at its works at Braddock.

Q. Were those machines operated by that company?

A. They were installed, and the power attached to them, but they were not run, because a suit was brought here in this court by the Columbia Wire Company against the Pittsburgh Wire Company on the ground of an infringement of the patent on the machines.

MR. LINDABURY: When was that?

THE WITNESS: In 1904, the suit was brought.

MR. REED: You mean 1894, do you not, Mr. Fitch?

THE WITNESS: 1894, yes; that is right.

By MR. DICKINSON:

Q. Do you know whether or not John W. Gates, at that time, when that suit was brought, had any connection with the Columbia Wire Company?

A. Yes; he was the head of the Columbia Wire Company.

Q. State whether or not John W. Gates, or any company controlled by him, or he and his associates, purchased those machines from your company.

A. Yes; that was settled out of court. The suit was brought here and an injunction was asked, and the case was settled out of court by an interview between Mr. Bindley, myself and Mr. Gates.

MR. LINDABURY: A preliminary injunction had been issued?

THE WITNESS: Not until after the settlement was made.

By MR. DICKINSON:

Q. So that, as an outcome of that settlement, they purchased those machines?

A. Yes, sir; they were purchased and scrapped.

Q. How many machines? Have you stated that?

A. I think there were about six. It was just a beginning.

Q. Were those machines new or second hand?

A. They were second hand.

Q. What had you paid for them? What was the price paid by your company?

MR. REED: That is objected to as irrelevant.

THE WITNESS: Something under $3,000 was the total cost.

By MR. DICKINSON:

Q. What was paid to your company, in that settlement?

A. $10,000.

Q. Connected with the purchase of the machines was there any agreement entered into by yourself and Mr. Bindley and others, and if so, what was it?

A. Yes; not to enter into the barbed wire business.

Q. For what period?

A. I cannot remember. I think it was indefinite. We never attempted it afterwards, anyhow.

Q. You never have entered into that business?

A. No sir.

Q. And your recollection was that it was indefinite?

A. Yes.

Q. What do you mean by indefinite?

A. That we were not to go into it at all. The usual period is ten years in the case of an agreement of that kind, but, as I say, we did not attempt to go into it.

Q. Was there any such limitation as that in this particular agreement?

MR. LINDABURY: Ought we not to have it, Judge?

By MR. DICKINSON:

Q. Have you that agreement?

A. No, sir; I do not think I have. Mr. Bindley may have it.

MR. LINDABURY: I do not understand the witness to remember with exactness the terms of that agreement.

THE WITNESS: No; I only remember the amount paid and the fact that we were not to go into the business again. We surrendered the machines to them and they scrapped them.

MR. LINDABURY: You do not remember the number of years during which you were not to go into that business, do you?

THE WITNESS: No. It certainly would not be less than ten years.

MR. REED: It is just your inference, is it not, Mr. Fitch?

By MR. DICKINSON:

Q. As I understand, to the best of your recollection that particular agreement was, as you have stated, that you were not to go into that business at all?

A. That we were not to go into it at all, yes.

MR. LINDABURY: I did not understand him to say that. I want to be perfectly fair, Judge.

By MR. DICKINSON:

Q. Did you not say that, that you were not to go into the business at all?

A. Yes, sir. In perfect good faith we were not to go into it again.

MR. LINDABURY: Do you mean you were never to go into it again?

THE WITNESS: Never, yes.

MR. DICKINSON: That is what I understood him to say before.

MR. LINDABURY: I understood that he had no recollection as to the time.

MR. DICKINSON: No, I understood him to say that they were never to go into the business again.

MR. LINDABURY: I understand. You, apparently, are right, Judge.

THE WITNESS: The Pittsburgh Wire Company was not to go into it again.

By MR. DICKINSON:

Q. Who entered into that agreement not to go into business?

A. The Pittsburgh Wire Company and the Columbia Wire Company were the parties.

Q. Did any of you, individually?

A. No, sir; not in that case.

MR. LINDABURY: I think we ought to call for the production of that paper. I am quite satisfied that the witness is in error about it.

By MR. DICKINSON:

Q. Do you know where that agreement is?

A. No, sir; I do not.

Q. When did you last see it?

A. I do not know whether Willis McCook had it or not. The only thing is to make a note to ask if Willis McCook, the attorney here, or John Bindley, have that agreement.

Q. You have not got it?

A. I have not; no, sir.

Q. Mr. Fitch, please state, so far as you can recall, the names of the companies in the United States that were manufacturing barbed wire during the period from 1890 to 1899.

A. I have been interviewed by the counsel on both sides of this case, and I judged, from what they asked me, that there would be a question of that kind; so I, from memory, jotted down, in a rough way, what those companies were; and if I may be permitted to refer to that memorandum, I can save a good deal of time.

MR. REED: We have no objection, if Judge Dickinson has none.

MR. DICKINSON: I have no right to call for a paper of that sort. I am asking for your memory.

THE WITNESS: It is a rough draft.

MR. DICKINSON: I am asking for your memory. Is there any objection to his using that memorandum?

MR. REED: Not a bit, as far as we are concerned.

MR. LINDABURY: It is a matter of memory, anyhow, except that he has put it down in the form of a memorandum.

THE WITNESS: Yes; it is a matter of memory.

MR. REED: That is what you remember, and not what somebody else has remembered for you, Mr. Fitch?

THE WITNESS: Yes. I have not consulted anybody. I knew I would take up too much of your time if I were to try to remember it without putting it down at my leisure.

By MR. DICKINSON:

Q. What period does that paper that you have there cover?

A. Some of it covers more than the period about which you inquire, but in looking it over I can only name those that were in that period.

Q. Please name those that were in that period, that were making barbed wire.

A. Yes; not rods or wire, but just barbed wire?

Q. Just barbed wire.

A. I will look over this list. (Consulting memorandum) John A. Roebling's Sons, Trenton, New Jersey.

Iowa Barbed Wire Company, Allentown, Pennsylvania.

Oliver Wire Company, Pittsburgh, Pennsylvania; I think

they operated under the name of H. B. Scott Company; that is, their barbed wire department.

Of course there was the American Steel & Wire Company at Rankin. They had barbed wire machines.

Packers Wire Nail Company, Cleveland, Ohio.

The Cleveland Rolling Mill Company, Newburg, Ohio.

The Crawford Wire Company, Crawfordsville, Indiana.

The Cincinnati Barbed Wire Company, Cincinnati, Ohio.

A man named Schnabel manufactured barbed wire in Chicago. It was from him that we bought barbed wire machines. They were his make of barbed wire machines, and we bought them when we tried to start. He had a little shop there. I was in it at one time.

Lambert & Bishop, Joliet, Illinois.

This is in answer to your question directly, Judge.

Q. I understand.

A. Within that period which you named.

Q. Yes; 1890 to 1899.

A. Yes.

H. B. Scott Company, Joliet, Illinois.

Ashley Wire Company, Joliet, Illinois.

Dillon & Griswold Wire Company, Sterling, Illinois.

Haish Wire Company, De Kalb, Illinois.

Ellwood & Glidden, De Kalb, Illinois.

Continental Wire Company, Granite City, Illinois.

Freeman Wire Company, East St. Louis, Illinois.

The Missouri Wire Company, I think, came in afterwards.

The Omaha Barbed Wire Company, Omaha, Nebraska.

The Lawrence Barbed Wire Company, Lawrence, Kansas. I think that name was afterward changed to Hendly. However, that is the name of it.

I have a name here, the Rockdale Works, near Joliet. I think that was Lambert & Bishop; I am not certain. I may duplicate that. It may have been one of the old works. Lately I have known it as the Rockdale Works, but it may have been one of those earlier concerns that I named there in Joliet.

Washburn & Moen, of Worcester, Massachusetts, and Waukegan, Illinois.

That is all I know of that were in the barbed wire business in that period.

Q. Did you mention the Baker Wire Company of Rockport, Illinois?

A. No. That is one I did not remember, but I remember they were in the business, because I used to make square wire for them. They had the strand square, so the barb would not turn. Yes; that is right. I have made wire for them. It is so long ago that I cannot very well remember all of these different things. There were more than that.

Q. Did you mention the Consolidated Barbed Wire Company of Lawrence, Kansas?

A. Yes. I gave it the name of the Lawrence Wire Company. That is the Hendley Company. I sold him his first car of wire.

Q. How about the Newburgh Wire Nail Company, of Newburgh, New York?

A. I guess they were under the Kilmer's. That was when the Kilmer's had it. I think they were making barbed wire in that period. They failed, afterwards.

Q. You mentioned Roebling?

A. Yes, sir.

Q. Do you know to what extent Roebling was making barbed wire?

A. I think to a very limited extent. I sold Mr. Roebling his first barbed wire machine in St. Louis, many years ago.

Q. When was that?

A. Oh, that was about 1880.

Q. Were they making barbed wire, so far as you know, in 1899?

MR. REED: That is not what you asked him.

MR. DICKINSON: I am asking him that now.

A. In 1899?

By MR. DICKINSON:

Q. Yes, 1899.

A. Yes, sir.

Q. Do you know to what extent?

A. No. I think to a very limited extent.

Q. How about 1898; were they making barbed wire then?

A. Oh, yes. Bought a barbed wire machine from me in 1880.

Q. I am asking, though, as to what extent they were making it in 1898?

A. I do not think they went into it to a very great extent. They had more important products.

Q. What is their main product?

A. Copper wire and rope wire.

A. What purposes is that used for?

A. Trolley lines and other purposes. The copper is used for telegraph wire.

Q. Is it used for the same purposes as barbed wire?

A. Oh, no.

Q. It is a different product?

A. An entirely different product.

Q. You have mentioned, in answer to my question, so far as your memory goes, those concerns that made barbed wire at any time within the period from 1890 to 1899. That is correct, is it?

A. Yes, sir.

Q. Of those concerns that were making barbed wire in the United States, at the time the American Steel & Wire Company of New Jersey was formed, please state what proportion went under the control or were consolidated by the American Steel & Wire Company of New Jersey.

MR. REED: Will you ask him first whether he knows the proportion? Of course you do not want him to guess at it.

(The stenographer repeated the question as above recorded.)

MR. DICKINSON: I will modify the question.

By MR. DICKINSON:

Q. Of those concerns that were making barbed wire in the United States at the time the American Steel & Wire Company of New Jersey was formed, do you know which went under the control of the American Steel & Wire Company at its formation? I do not ask you to name them, but

if you know which they were. I am not calling for the names, but am asking generally if you know which ones went under that company. I do not know that you understand me?

A. Yes, I understand you. I do not think I can answer that question.

Q. What concerns of any importance making barbed wire at that time in the United States did not come under the control of the American Steel & Wire Company at the time it was formed?

Mr. Reed: Of course, if Mr. Fitch knows.

Mr. Dickinson: I am asking him what he knows.

A. I cannot answer that question either.

By Mr. Dickinson:

Q. To what extent did the American Steel & Wire Company at its formation get control of the business of barbed wire manufacturing in the United States?

Mr. Reed: Objected to for the reason that the witness has just stated that he does not know what companies went in and what companies did not go into the American Steel & Wire Company.

The Witness: That objection is hardly correct, "because he does not know what companies went in." He does not know some of the companies that went in, but the way the question was put to me by the Judge was whether I could give all the companies.

Mr. Reed: I am much obliged for that suggestion. I will restate the objection. Objected to for the reason that the witness has stated that he cannot name all the companies that went into the American Steel & Wire Company, nor can he specify all the companies which did not go in; and therefore, on Mr. Fitch's own statement, he is manifestly unable to state the percentage of capacity which was taken into the American Steel & Wire Company.

By Mr. Dickinson:

Q. Mr. Fitch, state, so far as you know, what concerns that were manufacturing barbed wire in the United States

were taken under control or combined by the American Steel & Wire Company of New Jersey when it was formed?

MR. REED: Objected to because, in answer to the same question, the witness stated that he had not sufficient knowledge to answer the question accurately.

MR. DICKINSON: I am asking him if he knows; I am asking him what he remembers?

MR. LINDABURY: I take it that the question asks for the names of those he remembers. Am I right?

MR. DICKINSON: So far as he knows; yes, sir.

(The stenographer repeated the question as above recorded.)

A. Washburn & Moen, of Worcester, Mass., and Waukegan, Ill.; Iowa Barbed Wire Company of Allentown, Pa.; Oliver Wire Company of Pittsburgh; Braddock Wire Company of Rankin; Lambert & Bishop, Joliet, Ill.; Ellwood & Glidden, of DeKalb, Ill. There are other names, other parties who may have gone in at that time or gone in later, but I am trying to confine myself to that period. That is what bothers me.

Q. What concerns can you name from memory which were making barbed wire at that time and which did not go under their control?

A. I do not know. Of course some of them may have gone in that did not go in at that time, and I cannot make the division there.

Q. Can you name any, according to your recollection, that did not go in at that time?

A. No, I cannot. Confining myself to that period, I cannot do that. I know they all went in afterwards, but who went in and who did not go in at that time I cannot recollect.

Q. It is the particular period that you are uncertain about?

A. Yes, sir. I cannot commit myself about that.

Q. State to what extent at its formation or shortly afterwards, the American Steel & Wire Company acquired control of the barbed wire production of the United States.

MR. REED: That is objected to as calling for a conclusion.

MR. LINDABURY: How can the witness know?

THE WITNESS: I think it controlled nearly—

MR. DICKINSON: Wait a moment. I think it is perfectly right to enter any objection you want to on the record. Do you intend to have that go on the record, Mr. Lindabury?

MR. LINDABURY: I made the objection and addressed it to you.

MR. DICKINSON: I understand, but it goes to the ear of the witness.

MR. LINDABURY: I will make my objection on the record. It is a subject about which the witness cannot have information. I object because the question calls for speculation and an answer about which the witness cannot know.

MR. DICKINSON: Have you finished your objection?

MR. LINDABURY: Yes.

MR. DICKINSON: Please read the question.

(The stenographer read the question as follows:)

"Q. State to what extent at its formation or shortly afterwards the American Steel & Wire Company acquired the control of the barbed wire production of the United States.

"A. I think it controlled nearly—"

By MR. DICKINSON:

Go ahead with your answer.

A. I think it controlled nearly the whole output of the barbed wire of the United States through a barbed wire pool that was formed some time afterwards in Chicago.

Q. I am not asking you about its control through a pool. If the pool had any concerns in it that were not owned or controlled immediately by the American Steel & Wire Company of New Jersey, I do not care for an answer to that question. I ask you to please answer the question and confine it to its control acquired by its combination of various concerns under one company.

MR. REED: Objected to for the same reasons that were stated as objections to the last question.

A. I cannot tell what concerns passed absolutely into the control of the American Steel & Wire Company. They might

have had agreements, but whether they bought those concerns out, I am not familiar with that.

By Mr. Dickinson:

Q. You have said something about control through a pool. Please state more fully the facts as you may know them in regard to that.

A. I remember that a pool was formed of which John W. Gates and William Edenborn, the late George Douglas, Isaac Ellwood, George T. Oliver and the Cincinnati Barbed Wire man, Lamson, were members; and they had their regular meetings, the barbed wire manufacturers, all of those except those who were licensed. That was all prior to this American Steel & Wire Company.

Q. So when you answer about control through a pool, you are referring to a time prior to the formation of the American Steel & Wire Company?

A. Yes, sir.

Q. My question to you was addressed to a period subsequent to the formation of the American Steel & Wire Company of New Jersey, and was in substance to what extent by that combination and subsequent acquirement or control by that company of plants it acquired the barbed wire production of the United States.

Mr. Reed: Objected to for the reasons stated, when the same question was asked last.

A. After the Columbia Wire Company had purchased all the patent rights of Washburn & Moen, the American Steel & Wire Company then controlled the barbed wire industry of this country. There were no outsiders manufacturing barbed wire, outside of the American Steel & Wire Company, without being under its control, that I know of, because they purchased all the patents owned by Washburn & Moen and Isaac L. Ellwood.

Q. When were those purchases of patents made, that you refer to?

A. I cannot give the exact date, but it was prior to the formation of the American Steel & Wire Company.

Q. Were Oliver & Snyder manufacturing barbed wire prior to the formation of the American Steel & Wire Company of New Jersey?

A. Mr. Snyder was never identified with the barbed wire company. Oliver & Snyder were principally in the ore business. The Oliver Wire Company—George T. Oliver was in interested in barbed wire, but not Snyder.

Q. Where was that company situated?

A. Over on the South Side, corner of Ninth and Bingham.

Q. Were they making barbed wire prior to the formation of the American Steel & Wire Company of New Jersey?

A. Yes, sir.

Q. How long did they continue to make it?

A. The plant was dismantled in 1903, I think.

Q. Were they making it at the time of the formation of the American Steel & Wire Company of New Jersey?

A. Yes, sir.

Q. Did they continue beyond that time?

A. Yes, sir.

Q. Up to what period?

A. It was dismantled in 1903.

Q. Prior to the sale by the Pittsburgh Wire Company to Gates and associates, with what concerns did the Pittsburgh Wire Company come in interstate competition in the sale of wire rods?

A. Wire rods?

Q. Yes.

A. Washburn & Moen; Cleveland Rolling Mill Company; Oliver & Roberts Wire Company; Illinois Steel Company; and I could name others, but while they were in the rod business, they were not exactly competitors, because they used a good deal of their material for their own works. They were the ones really that were on the market.

Q. On the market and selling in interstate commerce?

A. Yes.

Q. When the American Steel & Wire Company was formed, what wire rod mills were then in existence in the United States, if any, which that company did not acquire the control of?

A. Just prior to the—

Q. No, I mean at the time of its formation—

A. At the time of the formation of the American Steel & Wire Company?

Q. Yes; if there were any that continued independent after that formation, what were they?

MR. LINDABURY: Of course, of his own knowledge?

MR. DICKINSON: Yes.

A. Of course that is what I am trying to cudgel my mind about. It is so long since I have been in the business that I have to stop and think. John A. Roebling's Sons Company. I cannot think of any others that they did not control. They controlled nearly all the others.

By MR. DICKINSON:

Q. Did John A. Roebling's Sons Company make wire rods for sale in the market or for use in their own manufacture?

A. Their sale to the market was very limited. They used it mostly in their own products.

Q. At the time you sold your interest in the stock of the Pittsburgh Wire Company to Mr. Gates and others, state whether or not you and other stockholders of that company entered into any agreement to keep out of the wire business and, if so, who entered into that agreement, and what was it.

MR. REED: Objected to, because if the agreement itself is in writing, that would be the best evidence.

MR. COLTON: I served notice on you to produce that agreement.

MR. LINDABURY: The agreement was not made with us.

MR. COLTON: I think the agreement would be with the American Steel & Wire Company.

By MR. DICKINSON:

Q. Answer the question.

A. What was the question?

(The stenographer repeated the question as above recorded.)

A. Most of the stockholders, including myself, signed an agreement to keep out of the business for ten years.

By Mr. Dickinson:

Q. Where is that agreement?

A. The American Steel & Wire Company has it. At least, they had it, and I suppose they have it yet. It would come into possession of the American Steel & Wire Company through the agreement having been made between the stockholders of the Pittsburgh Wire Company on the one part and John W. Gates and Isaac L. Ellwood, of the other part, and they were prominent factors in the American Steel & Wire Company.

Q. And you have no copy of it?

A. No.

Q. You have no original?

A. No.

Q. What stockholders were parties to that agreement besides yourself?

Mr. Lindabury: Objected to as calling for the contents of a written document.

Mr. Dickinson: That only calls for those who made the contract.

Mr. Lindabury: I stand by the objection.

Mr. Dickinson: Of course.

A. Ten or twelve stockholders. Only three or four were prominent stockholders. The rest were some of those up in Braddock. When I first started that company I issued stock to some of the workmen and they were stockholders. So they were minor stockholders. Not more than twelve, including them.

(Whereupon a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

The hearing was resumed pursuant to the taking of recess.

THOMAS W. FITCH,

the witness under examination at the taking of recess, resumed the stand for further

DIRECT EXAMINATION, (Continued.)

By Mr. Dickinson:

Q. Prior to the formation of the American Steel & Wire Company from whom did the Pittsburgh Wire Company buy billets?

A. The Carnegie Steel Company, Pennsylvania Steel Company, and Jones & Laughlin, principally.

Q. How about Schoenberger?

A. I omitted them. Yes, Schoenberger & Company. We bought largely from Schoenberger.

Q. From whom did you buy mainly?

A. Schoenberger and Carnegie.

CROSS EXAMINATION,

By Mr. Reed:

Q. You spoke of a contract that you and Mr. Bindley made not to go into the barbed wire business again. You know, do you not, that Mr. Bindley has been in the barbed wire business very extensively through his interest in the Pittsburgh Steel Company?

A. Yes, sir.

Q. And that since about 1902?

A. Yes, sir.

Q. So that that agreement did not, to the best of your recollection prohibit—

Mr. Dickinson: I did not ask you about prohibiting him.

Mr. Reed: I understood it that way.

MR. DICKINSON: The question as to prohibiting him is one thing—

THE WITNESS: (Interrupting) Counsel, I beg pardon, but Mr. Bindley was not a stockholder at the time the Pittsburgh Wire Company sold out. Therefore there was no occasion for him to sign anything.

By MR. REED:

Q. Then he did not sign an agreement?

A. He was not in the company at that time.

Q. Then if the inference can be drawn from your testimony that he was in the company at that time, that is a mistake?

A. Yes, sir. The only time his name would come in there was when an agreement was entered into between Mr. Gates and Mr. Bindley and myself to sell those barbed wire machines and discontinue the manufacture of barbed wire.

Q. Did Mr. Bindley sign that?

A. I think he did. Mr. Willis McCook was our counsel at that time, and the arrangement was made with Mr. Bindley and Mr. Willis McCook.

Q. What companies had rod mills in 1899?

A. The Rankin plant; the Braddock plant—

Q. That is the Rankin plant of the Braddock Wire Company?

A. The Braddock Wire Company. That is its old name. It was Consolidated Steel & Wire at that time.

Q. The Braddock plant of the Pittsburgh Wire Company?

A. Yes, sir; the Braddock plant of the Pittsburgh Wire Company. The John A. Roebling's Sons Company, Washburn & Moen Company, of Worcester, Massachusetts, and Waukegan, Illinois; the Cleveland Rolling Mill Company, of Newburg, Ohio; the Illinois Steel Company, of Joliet, Illinois; Dillon-Griswold Company of Sterling, Illinois. What years?

Q. At the time of the formation of the American Steel & Wire Company.

A. Oliver & Roberts Wire Company, of Pittsburgh, Pennsylvania.

Q. You mean Oliver & Snyder, do you not?

A. No, sir; counsel got that mixed about Snyder. Snyder has not been in this business at all. There are two different Olivers, too. Let this be outside the record. The Oliver in the Snyder firm is Harry Oliver. George T. Oliver is the one identified with the rod business. The firm name was Oliver & Roberts. That means George T. Oliver.

Q. What others?

A. There may have been others, but I cannot recall them just now. You know that has been a long time ago.

Q. The American Steel & Wire Company did not get the rod mill of the Illinois Steel Company, did it?

A. Not until afterwards, no.

Q. Did it ever get it?

A. Yes. I think those plants are controlled by the American Steel & Wire Company. They have rod mills and wire mills there. It was—

Q. (Interposing.) It is all in the United States Steel Company now?

A. But your question is what subsidiary company is that plant in?

Q. And until the United States Steel Corporation was formed the American Steel & Wire Company had no ownership or control over the Illinois Steel Works rod mill, had it?

A. For one reason I cannot answer that question either affirmatively or negatively. That is for the reason that the Illinois Steel Company had John W. Gates as President about that time, and before the formation of the American Steel & Wire Company those rod mills and wire mills were running. Yet it might have been under some arrangement with the wire companies of which Gates was the head.

G. A. STEINER,

a witness produced by and on behalf of the United States, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Mr. Steiner, where do you live?

A. Pittsburgh.

Q. What is your age?

A. Sixty-eight years.

Q. Were you connected with the Schoenberger Steel Company, and if so, during what period and in what capacity or capacities?

A. I was connected with the Schoenberger Steel Company at the time they sold out and many years previous thereto.

Q. Were you a stockholder?

A. I was.

Q. Were you an officer of the company?

A. I was.

Q. State whether or not you were familiar with its operations and sales.

A. Quite familiar, yes.

Q. What did the works of that company consist of? I mean in a general way.

A. (Referring to memorandum.) I will give it to you. We had a plate mill, blooming mill, converters, skelp mill, and a horseshoe mill.

Q. Did you have any furnaces?

A. Yes; blast furnaces.

Q. How many blast furnaces?

A. Two.

Q. Did your company have any interest in any coal companies or coal properties?

A. We had.

Q. What was it?

A. We were interested in coking, and in addition to that we had a coal field at Latrobe.

Q. Did you own those properties directly, or through an interest in a subsidiary company?

A. One of the properties directly, and the other through an intermediary company.

Q. What was the name of the company?

A. The Juniata Coal Company.

Q. What was the annual capacity in gross tons of finished products of the Schoenberger Steel Company at the time it was sold?

MR. REED: May I suggest that that question might confuse the witness or anyone reading the testimony? If you will state it in steel, which I think you want, it would be easier for him to answer.

MR. DICKINSON: Well, I will ask it that way—

A. Our total tonnage was from 200,000 to 225,000 tons.

By MR. DICKINSON:

Q. Gross tons?

A. Gross tons. Part of that tonnage we used in our own plant, and part of it we sold as raw material to others.

Q. What did you produce?

A. We produced steel blooms and billets, plates, and sheets, skelp, horseshoes, horseshoe toe calks, and pig metal.

Q. Slabs?

A. Slabs come under the head of steel blooms and billets.

Q. In the sale of plates state with what concerns or companies the Schoenberger came in competition in interstate commerce, and in what character of articles.

A. In the matter of plates we came in competition with the Otis Iron & Steel Company, Worth Brothers, Luce & Penrose, Carbon Steel Company, Jones & Laughlin, Carnegie Steel Company, Illinois Steel Company, and there was one other, the Glasgow Iron & Steel Company.

Q. The question was whether you came in competition with them in interestate commerce.

A. We did.

Q. Did or not Schoenberger & Company sell plates in the Chicago and Pittsburgh Districts?

A. They did.

Q. In general competition throughout the country also?

A. Yes, sir.

Q. With what concerns, at the time the Schoenberger Company was sold did it come in competition in interstate commerce in the matter of the sale of billetts?

A. Carnegie Steel Company, Oliver & Snyder, Illinois Steel Company, Jones & Laughlin, Shenango Steel Company and the Ohio Steel Company.

Q. If the Schoenberger Company, either its property or the control of the stock of that company, was sold, state when it was sold, and to whom?

A. The Schoenberger property was sold in the spring of 1899, and it was sold to the American Steel & Wire Company.

Q. At what price?

A. At a price of $3,600,000.

Q. State whether or not any of the officers or stockholders of that company entered into a contract at that time, or about that time, and as a part of that transaction, with the vendees, by which they obligated themselves to stay out of the character of business that was being carried on by the Schoenberger Company; and, if so, for what period of time, and in what territory.

A. The three officials of the company—

Mr. Reed: Objected to as incompetent and irrelevant and as not the best evidence of the contents of a written agreement, if it was a written agreement.

Mr. Colton: In this connection I will call attention to the fact that we have served notice to produce that contract.

Mr. Lindabury: On whom?

Mr. Colton: On you, Mr. Lindabury.

Mr. Lindabury: I do not remember it.

(Upon request the pending question was repeated by the stenographer as follows:)

"Q. State whether or not any of the officers or stockholders of that company entered into a contract at that time, or about that time, and as part of that transaction, with the vendees, by which they obligated themselves to stay out of the character of business that was being carried on by

the Schoenberger Company; and, if so, for what period of time, and in what territory."

A. They did, and for a period of ten years.

By Mr. Dickinson:

Q. And who entered into that?

A. The president—

Q. Just name them.

A. President Charles L. Fitzhugh; first vice president John Z. Spear; second vice president, G. A. Steiner.

Q. The last named gentleman is yourself?

A. Yes, sir.

Q. What territory did that contract embrace?

A. Pretty nearly all the United States, with the exception possibly of Florida and Arizona.

Q. State whether or not, so far as you know, at that time any business of that character was being carried on or has been carried on in either of those states?

Mr. Lindabury: I object. The witness does not say those were excepted. He said it was possible that they were excepted.

Mr. Dickinson: I will ask you whether or not your recollection is that those states were excepted?

The Witness: I think they were.

By Mr. Dickinson:

Q. And the balance of the United States was embraced in it?

A. Yes.

Q. Now, answer the question whether or not at that time, or previous thereto, you had ever known anybody carrying on that character of business in either of those states.

A. I had not.

Q. Was that a written contract?

A. It was incorporated in the contract.

Q. You have been asked to look for it?

A. No, sir.

Q. Have you it in your possession?

A. No, sir; I have not.

Q. Do you know where it is?

A. No, sir.

Q. How long has it been since you saw it?

A. I don't think I saw that contract. I do not think I have seen it since it was drawn up and signed by the parties to the transaction. I think that is the last I saw of it.

Q. Do you know where that is now?

A. I think that contract is probably in the possession of the United States Steel Corporation.

MR. LINDABURY: I object to speculations.

MR. DICKINSON: Well, he said he does not know where it is. That is all.

MR. LINDABURY: I renew my objection as to the testimony in regard to this contract, on behalf of all the defendants except the American Steel & Wire Company. I except them on the statement of counsel that they were served with a notice to produce it. The Steel Corporation never had possession of it. I do not know whether the American Steel & Wire Company ever had it or not.

CROSS EXAMINATION.

By MR. REED:

Q. You have not been connected with the Schoenberger Steel Company since it sold out in 1899, have you?

A. I have not.

MR. REED: I do not think we have any further cross examination.

EDMUND W. MUDGE,

a witness produced by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. COLTON:

Q. When did you go into business?

A. I started in business in 1887.

Q. In what business were you engaged during the period from 1895 to 1901?

A. I was connected with the firm of Charles E. Pope & Company, dealers in iron and steel.

Q. During the period 1895 to 1899, from what company did you purchase sheet bars?

A. 1895 to 1899, I purchased sheet bars from the Ohio Steel Company, Bellaire Steel Company, Junction Iron Company. I think that was all.

Q. State whether or not you purchased sheet bars from the Bellaire Steel Company.

A. Yes; I mentioned that company.

Q. The Columbus Iron & Steel Company?

A. No, I never bought any from Columbus.

Q. State whether or not you purchased any sheet bars from the Shenango Valley Steel Company.

A. I do not think we ever did.

Q. Were those companies, from which you state you purchased sheet bars, in competition with one another in interstate commerce?

A. Yes.

Q. What is the distinction between sheet and tin plate bars?

A. There is hardly any difference. A tin bar is perhaps a little lighter than a sheet bar. All are rolled on the same mill. The steel is about the same quality.

Q. After the formation of the National Steel Company did you experience any difficulty in respect of the purchase of sheet bars or tin plate bars; and, if so, what difficulty?

A. After the formation of the National Steel Company there were not many bars to be sold or purchased. They had practically all the trade, outside of the Illinois Steel Company and the Carnegie Steel Company.

Q. Why could you not get it from the Illinois Steel Company or the Carnegie Steel Company?

MR. LINDABURY: Did he say he could not? He has not said he could not, yet.

MR. COLTON: I wanted to know.

MR. LINDABURY: Then you had better ask him if he could not?

MR. COLTON: I will ask him that, then.

THE WITNESS: As to the Illinois Steel Company, I do not think we had any business that occasioned us to ask them for any bars. The Carnegie Steel Company had none for sale, I believe.

By MR. COLTON:

Q. Do you know whether they were selling tin plate and sheet bars at that time?

A. Yes, I think they were selling to the American Tin Plate Company and the American Sheet Steel Company.

Q. And had none for sale to anyone else?

A. I do not think they had any for sale for any new mills.

Q. What do you mean by "new mills?"

A. Any new mills that might want to start up at that time. It was rather difficult to secure sheet bars.

Q. Before the formation of the American Sheet Steel Company, and after the formation of the American Tin Plate Company, did you purchase any sheet and tin plate bars from any company?

A. After the formation of the American Tin Plate and before the formation of the Sheet Steel Company?

Q. Yes.

A. I think we did.

Q. From whom did you purchase them?

A. We bought some bars from Banning, Cooper & Company. But whether that was before the American Sheet Steel Company was formed or right afterwards, I could not answer.

Q. Was there any special regulation in connection with the purchase of those sheet bars or tin plate bars at that time, and, if so, what was it?

MR. LINDABURY: Objected to as irrelevant. Special regulation by these sellers?

MR. COLTON: Yes.

MR. LINDABURY: Independent dealers?

MR. COLTON: I will show the connection later on.

MR. LINDABURY: Objected to as immaterial and irrelevant.

THE WITNESS: I think we had to specify where the bars were to go.

By MR. COLTON:

Q. What do you mean by that?

A. We had to say whom they were for.

Q. Was it generally understood what was the reason for that regulation at that time?

MR. LINDABURY: I object to that as irrelevant and incompetent.

A. If I remember correctly, they did not want bars to go to any one making tin plate.

By MR. COLTON:

Q. Will you name the members of the firm of Banning, Cooper & Company, as far as you can?

A. I do not believe I can.

Q. Can you tell me whether Charles Guthrie was in that firm?

A. I think he was at one time.

Q. Do you know whether he was in the firm at that time or not?

A. I could not say that positively.

Q. State what products you were generally familiar with the purchase of and sale of at that time.

A. Black and galvanized sheets, pipe, merchant bars, tin plate, billets and sheet bars. Tin plate was perhaps our heaviest business.

Q. What companies, other than dipping plants, were left out of the American Tin Plate Company, if any?

A. I think Whittaker & Company of Wheeling.

Q. Any others?

A. I am not so sure whether Lalance & Grosjean was in operation at that time or not.

Q. During the period from 1895 to 1899 from what different companies did you purchase steel bars?

A. Merchant bars?

Q. Yes.

A. The Junction Iron Company; Aetna Standard; Jones & Laughlin; Union Iron & Steel Company; J. Painter & Sons.

Q. From the Cleveland Rolling Mills?

A. Yes, sir; I think we did.

Q. From the Oliver Iron & Steel Company?

A. Yes.

Q. State whether or not those companies were in competition with one another in interstate commerce.

A. They were all in competition.

Q. During the period from 1895 to the formation of the American Sheet Steel Company in 1900, from what different sheet companies did you purchase common black sheet and galvanized sheets?

A. Black and galvanized sheets we bought from the Scottdale Iron & Steel Company, the Old Meadow Rolling Mill Company, Struthers Iron & Steel Company, Falcon Iron & Nail Company, Cambridge Iron & Steel Company, New Philadelphia Iron & Steel Company, Reeves Iron Company, Whittaker Iron Company, Dennison Rolling Mill Company, Hyde Park Iron & Steel Company, I think. I think that is about all. There may have been a few others.

Q. State whether or not you purchased any common black sheet and galvanized sheet from the Aetna Standard Iron & Steel Company.

A. Yes, I think we did.

Q. State whether or not you purchased any such products from the Cincinnati Corrugating Company.

A. Yes, we did.

Q. Can you name any other companies from which you purchased such products during that period?

A. I think that is about all we did business with.

Q. State whether or not those were the principal manufacturers of common black sheet and galvanized sheets at that time.

A. There was another very large concern—the Apollo Iron & Steel Company. We did no business with them, however.

Q. That should be included in the list of the important concerns?

A. Yes, they were the largest of all. We did not do any business with them, however.

Q. Can you name any other large companies, or important companies?

A. There were a few others, but I think that list covers the most important.

Q. State whether or not those companies were in competition in interstate commerce with one another.

A. They were.

Q. In 1902 in what business were you engaged?

A. In the same business.

Q. Did you have occasion during that period to purchase sheet and tin plate bars from any company or companies?

A. I started to build the Pope Tin Plate Company in 1901, and it was completed in July, 1902. It started up that month. We bought tin bars about that time, perhaps a little earlier than that.

Q. Name the company from whom you purchased the tin plate bars at that time.

A. We bought from the Sharon Steel Company and the La Belle Iron Works.

Q. Was there any special difficulty in securing tin plate bars during the period from 1899 to 1902?

A. Yes, there was considerable difficulty in securing bars during that period. I might say during most of that period it was very difficult to secure any kind of semi-finished material such as sheet bars or billets. The demand for steel products at that time was very heavy.

Q. Have you been engaged in the coke business?

A. Yes, sir. I am in the coke business now.

Q. From what district do you get your coke?

A. From the Connellsville district; upper and lower regions.

Q. Are you a general dealer in coke?

A. We are a general dealer in coke, pig iron, steel, scrap.

Q. Do you purchase coke from the West Virginia district?

A. Not very much.

Q. State whether or not there is any special reason why you do not purchase coke from that region, and if so, what is that reason?

MR. LINDABURY: Objected to as irrelevant and immaterial.

By MR. COLTON:

Q. Answer the question, please.

A. The principal reason is on account of the freight rates in this district, and also most of the grades of West Virginia coke are not suitable for the manufacture of steel-making irons in what we call the Pittsburgh and Valley districts, where our heaviest trade is.

MR. COLTON: That is all.

CROSS EXAMINATION.

By MR. LINDABURY:

Q. Are you acquainted with the Klondike district?

A. Yes, sir.

Q. There is a good deal of coking coal there, is there not?

A. There is a great deal of coke made in the Klondike. We call that the lower district.

Q. Is there not good coal found there?

A. Oh, yes.

Q. And a great deal of it?

A. Yes.

Q. And that district extends over into West Virginia, does it not?

A. Well, I would not say it does. I think good coking coal extends over into Green County, across the river into Green County.

Q. That is Green County, Pennsylvania, is it?

A. Yes; but I doubt whether that same grade of coal ex-

tends over into West Virginia. I think it is too high in sulphur.

Q. You say you doubt it. Have you exact information about it, or is that merely your opinion from general knowledge?

A. My experience in that section of West Virginia would show high sulphur coals.

Q. Now to go back to the earlier days, the National Steel Company was formed for the particular purpose of supplying the needs of the Tin Plate Company, was it not?

MR. COLTON: I object to that.

MR. LINDABURY: And by the principal owners of the Tin Plate Company?

MR. COLTON: Just a moment, before you answer that question. I object on the ground that it has not been shown that the witness was in the confidence of the promoters of the National Steel Company, as to the purpose for which that company was formed.

By MR. LINDABURY:

Q. I will modify that question by asking you if it was not general knowledge, if it was not generally known that such was the case?

A. It was the understanding in the trade that it was organized for about that purpose.

Q. Before that, the Tin Plate Company was buying its raw material generally in the market, was it not?

A. Before the Tin Plate Company was formed, the different tin plate mills bought from the different steel companies manufacturing tin bars or billets.

Q. That was before the Tin Plate Company was formed?

A. Yes.

Q. And after the Tin Plate Company was formed, and until the National was formed, that practice was continued more or less, was it not?

A. I think when the Tin Plate Company was formed, all the individual members or all the individual companies that went into the Tin Plate Company had contracts for their steel supply running to a more or less extent, and I think that those

contracts likely ran until the National Steel Company was formed.

Q. Anyhow, after the National Steel Company was formed, it furnished the raw material to the Tin Plate Company, did it not?

A. Yes; that is my understanding.

Q. I think that it was those practices of finishing mills arranging for their own supply of raw material that led to the lessening of the trade in semi-finished products that you have referred to, was it not?

A. It was the starting of the new way of doing business of finishing mills, and endeavoring to supply themselves with their own source of supply of raw material.

Q. Yes, and that was very general among the steel makers, was it not?

A. Well, it has been very general since that.

Q. Your correction is quite right. That was the start of it, and it became very general?

A. Yes, sir.

Q. So that nearly all the large steel manufacturers who have finishing mills have acquired facilities for supplying their own raw material, have they not?

A. Well, the finishing mills, as they grew larger, endeavored to protect themselves by supplying their own raw materials, and the raw material mills, in order to refrain from selling raw materials, increased their finishing capacity.

Q. Yes; so that that process of integration has gone on rapidly?

A. Yes.

Q. And it started about the time you mention?

A. It started about that time, yes.

Q. It has become very general now, has it not?

A. Yes, sir; it is very general.

Q. And that has lessened the market, in the way you mentioned, for semi-finished products? It has lessened the jobber's market? It has made it more or less difficult at times for the jobber to get semi-finished products, has it not?

A. I have always found, as a dealer, that there is no trouble, or no very great trouble, in securing semi-finished

materials, except in severe market conditions like we have at the present time. For instance, we have a market condition today that will no doubt continue for some months to come, so that it is almost impossible to get either sheet bars or billets. We call those semi-finished materials.

Q. What is the character of that market? You call it severe?

A. The plants manufacturing sheet bars and billets are so badly congested with business that it is practically impossible for them to take on any more tonnage until they increase their capacities. Their capacities can hardly be increased by new steel plants, or additions to their present plants, much before next July.

Q. It means, then, that the concerns are not able to supply their own needs in semi-finished products, does it not?

A. I do not think any steel plant can even supply their own needs today on semi-finished products, let alone taking care of outside trade.

Q. That was the situation in 1901 and 1902, that you referred to a while ago, as a time when it was difficult to get semi-finished products, was it not?

A. Part of that time, yes.

Q. The time that you alluded to, whenever it was, as being a difficult time to get semi-finished products; that was the occasion of it, was it not?

A. Partly so.

Q. You made some allusion to such a condition, in your direct examination. What you referred to was, as I understood you, the condition of what we call boom times, such as are now on?

A. That was part of the reason. Then, I rather think that the American Tin Plate Company and the American Sheet Steel Company had some arrangements with the two larger concerns outside of the National Steel Company in reference to sheet bars and billets.

Q. That is your thought about it?

A. Well, it was generally pretty well understood.

Q. I must object to that. You have not any knowledge on the subject, have you?

MR. COLTON: I think he should be allowed to state——

MR. LINDABURY: I object to the answer as to the witness' thought or opinion. If he has any knowledge, I will take it. I do not want his suspicions, or opinions. I have not asked for them.

MR. DICKINSON: You have a perfect right to object. The answer goes down, of course.

MR. LINDABURY: No. It is not an answer to my question.

MR. DICKINSON: Certainly it has gone down, I suppose.

MR. LINDABURY: Oh, yes, of course; and what I have said is down and what you have said is down. It is all down.

By MR. LINDABURY:

Q. What was the name of this firm that you said wanted to know what you were going to do with the semi-finished products if you got them, or with the sheet or tin bars, if you got them?

A. Banning, Cooper & Company.

Q. Where are they located?

A. In Pittsburgh.

Q. What is their business? Are they manufacturers?

A. No; they are dealers, the same as we were.

Q. They are dealers?

A. Yes.

Q. Jobbers?

A. Jobbers in raw materials or semi-finished materials.

Q. And you were a jobber in raw materials?

A. Yes.

Q. And before those jobbers sold to another firm of jobbers, they wanted to know what the latter firm of jobbers was going to do with the materials?

A. Yes.

Q. I see. I suppose you are interested, yourself, in that way, are you not?

A. Very much so, sometimes.

Q. Speaking of your source of supply after the National Steel Company was formed, the Carnegie Company made bars, did it not?

A. Yes, sir.

Q. Did you try to buy them?

A. I do not believe we ever did, directly.

Q. And they were the largest manufacturers of bars then, were they not?

A. They were supposed to be.

Q. The Illinois Steel Company was the next largest, was it not?

A. Next to the National Steel, or next to the Carnegie?

Q. Next to the Carnegie.

A. They had one mill on which they could roll bars, yes. They would be, next to the Carnegie, leaving out the National Steel.

Q. Was the National Steel larger?

A. In sheet bars; yes, sir.

Q. I suppose they were manufacturing for the use of the Tin Plate Company?

A. And the Sheet Steel Company; yes, sir.

Q. And the Tin Plate Company was taking their whole product, was it not?

A. I could not answer that.

Q. The Illinois Company, however, was selling, was it not?

A. The Illinois Company was selling some tonnage to the tin plate people, I believe.

Q. It was selling in the general market, too, was it not?

A. I do not think so.

Q. Are you sure?

A. I do not think they were.

Q. I said, are you sure?

A. It is pretty hard to be sure of anything.

Q. Did you apply to them for your supply?

A. I stated before that we did not have any occasion to negotiate with the Illinois Steel Company in that district for any bars.

Q. I believe you did say so. Then that means that you never applied to them?

A. Yes.

Q. You did not need to?

A. No, sir.

Q. I think you said you have continued to deal in steel products down to the present time?

A. Well, I was connected with Charles Pope & Company to May, 1903. Then I was Vice President of the La Belle Iron Works at Steubenville, from 1903 to November, 1905. From November, 1905, to the present time, I have been in business for myself.

Q. You have been in business dealing in steel products?

A. Dealing in steel products; raw materials.

Q. As a jobber?

A. As a jobber or dealer.

Q. I do not know whether that is the name you employ.

A. Dealer.

Q. Where is the La Belle Iron Works?

A. Steubenville.

Q. And when were they organized?

A. I think their original charter was 1848 or 1849. They manufactured cut nails in Wheeling for a great many years, until they built a tin plant, which was sold out to the American Tin Plate Company. Then they bought property at Steubenville, Ohio, and started their present plant.

Q. What was the present plant erected for?

A. The line of goods they manufacture, you mean?

Q. Yes.

A. They make billets and sheet bars, plate and skelp, pipe, sheets and pig iron.

Q. And did they do so while you were their secretary?

A. I was vice president.

Q. You were vice president and secretary also?

A. No, sir.

Q. You were vice president?

A. Yes, sir.

Q. They made those products during that time?

A. Yes, sir.

Q. And they are still doing it?

A. Yes, sir.

Q. Have they grown any since 1901?

A. Yes, sir.

Q. How much have they grown, in product?

A. The steel plant has practically all grown since that time; all the finishing mills have grown, with the possible exception of the cut nail mill, and a couple of small skelp mills.

Q. What is the tonnage now as compared with the tonnage in 1901?

A. Their steel tonnage I do not think was anything in 1901. It is between four and five hundred thousand tons now, I think.

Q. Has the growth been a steady one?

A. Yes; it has been regular.

Q. How large is the capital now?

A. I think their capital at the present time is about $20,000,000.

Q. What was it in 1902?

A. In 1902?

Q. Or, we will say, in 1901.

A. I do not know exactly. They started to sell stock about that time, and their stock was increased from time to time.

Q. Did it practically begin with nothing, then, do you mean?

A. I think it began with a million dollars, if I am not mistaken.

Q. So that there has been a growth from a million to twenty millions in the capitalization, during that time?

A. Approximately, yes, sir.

Q. And has that company competed with subsidiaries of the Steel Corporation during the years since 1901?

A. Yes, sir; but you understand I am not an official of the La Belle Iron Works now. I cannot answer as to anything from 1905 to the present time.

Q. I see. Are you not a stockholder?

A. I am a stockholder, yes, sir.

Q. To a pretty large amount?

A. Yes, sir.

Q. So you are generally familiar with their business, are you not?

A. Yes, sir.

Q. I only want general information. You do, of your own

knowledge, know all that you have told us so far, do you not?

A. Yes, sir.

Q. As to their capacity and capitalization, etc.?

A. Yes, sir.

Q. I want to ask you whether or not during the time you were vice president, and since, so far as you know, you found the Steel Corporation a fair competitor, or found that they were guilty of unfair practices?

A. They have been very fair.

Q. From your experience in connection with that company, as well as your experience as a dealer in steel products, we should like your opinion as to what, if any, advantages, the Steel Corporation has over other manufacturers in carrying on its business.

MR. COLTON: I object to his stating his opinion. I have no objection to his stating the facts, if he knows them.

By MR. LINDABURY:

Q. Very well. It is a matter of fact, rather than opinion, anyhow.

You know the general business conditions well enough to know, as a matter of fact, what, if any, advantages the Steel Corporation has over its competitors, do you not?

A. Yes, sir.

Q. Please state them.

A. The principal advantage is the owning of their railroads from the ore fields to the Lakes, and from the lower Lake ports to Pittsburgh.

Q. Has it any other advantages?

A. It has a more or less advantage, possibly, in location.

Q. Any other?

A. Then the Steel Corporation has mighty good management.

Q. Then, in the quality of its management and the location of its plants and in its transportation facilities consist whatever advantages it has, you think?

A. Yes, sir.

Q. Are there any others?

A. I should say not.

Q. As to the management, we will not go into the details about that, because anybody can understand what you mean about that.

As to the location of its plants: Wherein consists that advantage?

A. Its plants are scattered around through a territory that is a large consumer of iron and steel and, by shipping from the nearest plants to points of consumption, it is enabled to save freights.

Q. And is that a considerable advantage to a steel company that has its plants located in that way?

A. I think it would amount to considerable, in the course of a year.

Q. Do you know where the plants of the Federal were before the Steel Company was formed—the Illinois Steel?

A. Yes, sir.

Q. Were they so located that the Federal or its subsidiaries could compete with the Pittsburgh District for the eastern trade?

A. No, sir; they could not.

Q. Were they so located that the subsidiaries could successfully engage in foreign trade?

A. I do not see how it would have been possible for them to have done so.

Q. Why?

A. They had a very heavy freight differential against them. I do not see how they could possibly do it.

Q. And was the Federal then well balanced up? That is, did it have finishing mills in proportion to its rolling and other mills?

MR. COLTON: I object, on the ground that the witness has not been shown to be familiar with whether its finishing mills were adequate to its raw material supplies.

MR. LINDABURY: Question withdrawn.

By MR. LINDABURY:

Q. You know, I suppose, do you not, what mills the subsidiaries of the Federal had?

A. That is a long time to remember back. I have a gen-

eral idea. Of course we always try to keep fairly posted on what other plants have.

Q. You seemed to me to be familiar with it, and therefore I asked you the question, perhaps without first showing, as I ought to have done, that you knew.

A. I could tell you the line of goods that they manufactured.

Q. I would rather not go into that detail. The gentlemen on the other side may do so, if they choose. We are in a hurry to get through.

Will you tell us, now, whether or not they had a fully balanced plant, or whether they were short in any lines?

A. I think they were short of finishing capacity. I believe they had an excess of raw material capacity.

Q. That was rather marked, was it not?

A. I think it was.

Q. This advantage in transportation to which you refer consists in their ownership of those ore-carrying roads?

A. Yes, sir. That is their great advantage.

Q. Excepting in these respects to which you have referred, are they or not on the same level or basis with the other large manufacturers?

A. They have no advantage over any of the other large steel manufacturers, other than what has been mentioned; principally their railroad freight advantages.

Q. Can you give us any example of the advantage that the Steel Corporation has or may have because of the scattered character of its plants?

A. We might take the Wheeling District: If some one in the Wheeling District wanted to buy sheet bars, they would be obliged to get prices from the two mills at Youngstown, Jones & Laughlin at Pittsburgh, the Cambria, the Lackawanna Steel, and the Corporation. If the Corporation got the business, they would simply deliver it from their Bellaire or Mingo plant, at a nominal rate of freight, whereas all the other plants would have to pay freight from $1.05 to $1.80.

Q. Are there many consumers of sheet bars in the Wheeling district?

A. Yes; that was a good district. I am simply giving

that as an example. The same way in Pittsburgh or any other points; Camden.

MR. LINDABURY: That is all.

RE-DIRECT EXAMINATION.

By MR. COLTON:

Q. You were asked concerning the purpose for which the National Steel Company was formed. Have you ever had any discussion with any one of the parties that formed that company as to the purpose for which it was formed?

A. I do not believe I could answer that. I do not think I can remember back that far, whether I did or not.

Q. You said it was formed for about the purpose of securing raw materials. Was it formed, also, for the purpose of tying up raw materials so that other parties could not get them?

A. Possibly.

MR. LINDABURY: The question is objected to because it calls for hearsay; and the answer is objected to because it seems to be a speculation.

By MR. COLTON:

Q. Are you as familiar with one of those purposes as with the other?

A. That is rather a hard question to answer.

Q. To the best of your understanding?

A. I think it was done for both purposes.

Q. Do you know whether anyone in the firm of Banning, Cooper & Company was closely associated in business with someone in the American Steel Hoop Company or the American Sheet Steel Company or the National Steel Company or the American Tin Plate Company—any one of those companies?

MR. LINDABURY: That is objected to as irrelevant.

THE WITNESS: I do not know anything about the business of Banning, Cooper & Company.

By Mr. Colton:

Q. Do you know about who were the partners, at various times?

A. I know Mr. Cooper and Mr. Banning very well.

Q. Do you not know Mr. Charles Guthrie?

A. I know Mr. Guthrie very well; yes, sir.

Q. You answered that you thought there was quite a substantial difference between the finishing capacity of the Illinois Steel Company and its raw material supply. Do you know how many hundred thousand heavy T-rails were manufactured by the Illinois Steel Company?

A. I could not remember that. I perhaps knew it at the time. I generally tried to keep posted on production of that kind, but I could not answer that now.

Q. Was it very large?

A. They had a good capacity for rails.

Q. Do you know how it compared with the Carnegie Company's capacity for the production of heavy T-rails?

A. I do not think it was quite as heavy as that of the Carnegie Company. At different times it might have been a little more; and then the Carnegie Company would be more at times.

Q. Do you call wire rods a finished product?

A. No, sir; we call those semi-finished.

Q. As compared with billets, it is more highly finished?

A. Yes; it is a little more highly finished, but we call that a raw material or a semi-finished material.

Q. Do you call tin plate bars and sheet bars semi-finished?

A. Semi-finished; yes, sir.

Q. By buying up the National Steel Company, would the Illinois Steel Company be getting a means of disposing of its raw material supply?

A. It would help the Illinois Steel.

Q. How? What finished products would it help, in the purchase of the National Steel Company? What finished products were manufactured by the National Steel Company that were not manufactured by the Illinois Steel Company?

A. I didn't refer to finished products; I referred to semi-finished products.

Q. What semi-finished products would it help them in?

A. It would help them sell some billets and sheet bars.

Q. Did the National Steel Company need an additional supply of billets and sheet bars?

A. I cannot answer as to whether they had a sufficient tonnage to take care of that business or not. I know that a certain tonnage of those bars came from the Illinois Company, and a certain tonnage from the Carnegie Company, in addition to the National Steel Company.

Q. Do you know what were the principal products of the National Steel Company at that time?

A. Billets and sheet bars.

Q. Do you know what were the principal products of the Carnegie Company at that time?

A. Yes, sir.

Q. Name them.

A. Billets and sheet bars and structural material and plates and merchant bars, armor plates, hoops and bands, rails, tie-plates and splice bars. They had a wire mill, too; I think, at Beaver Falls.

Q. Do you know whether the tonnage in rails of the Carnegie Company was almost equal to the entire tonnage of all its other products?

A. I do not think I could answer that. I do not think it was.

Q. Do you know whether the Carnegie Steel Company was selling about the same number of tin plate bars as the Illinois Steel Company?

A. I could not answer that.

Q. How about sheet bars?

A. We call them the same.

Q. How about plates?

A. They were large manufacturers of plates.

Q. Was the Illinois Steel Company also a large manufacturer of plates?

A. Not so large; no, sir.

Q. Was not a substantial part of their production in plates?

A. They had a fair tonnage.

Q. In proportion to their size?

A. Yes; they had a pretty fair tonnage of plates, if I remember right.

Q. So far as plates are concerned, when they bought out the Carnegie Company, they were buying a company producing the same sort of products, were they not?

A. The same sort of products.

Q. And when they bought out the Carnegie Company, in regard to rails, they were buying a company producing the same sort of products, were they not?

A. Yes, sir.

Q. The same is true of the tin plate bars and sheet bars?

A. Yes.

Q. And, to some extent, in structural material?

A. The Carnegie was very much larger in structural production than the Illinois Steel Company.

Q. How about general supplies for railroads, such as bolts, nuts, splice bars, and those things? Were not both of those companies producing those?

A. I think the Carnegie only made splice bars. The Illinois Company, I think, made spikes, bolts, nuts and splice bars.

Q. Well, then, in that product they had a greater finishing capacity than the Carnegie Company, or at least more products?

A. More diversified, possibly.

Q. Do you know whether the United States Steel Corporation has any advantage over its competitors by virtue of its business connections throughout the United States?

A. That is a pretty hard question to answer.

Q. You have been giving your general understanding here. What is your understanding in regard to it?

A. I imagine in a few things they might have some advantage in that respect.

Q. Some alliances might be helpful with other companies; with railroads?

A. Yes; possibly.

Q. Do you know what proportion of the steel products of various steel companies is sold to railroads?

A. There is quite a difference of opinion on that. Some

people say 35 per cent. I have heard it all the way from 35 to 55 per cent.

Q. Then there might be a great advantage in having alliances with railroads, might there not?

MR. LINDABURY: I object to that as pure speculation.

THE WITNESS: The question of prices on their goods would have more influence than anything else, I should imagine, in the heavy purchases from the railroads. I have never yet found them willing to give more money to one concern than another.

MR. COLTON: That is all.

RE-CROSS EXAMINATION,

By MR. LINDABURY:

Q. As a matter of fact, in so far as you know, has the Steel Corporation ever had favors from any railroad on account of business or other association with its officers or managers?

A. I have never heard of any.

Q. Did you ever hear of the suggestion before?

A. No, sir.

Q. With regard to these finishing mills, plate mills, tin mills, wire mills, steel hoop mills, tube mills, they are very important finishing mills, are they not?

A. Yes, sir.

Q. Did the Federal have any of those before the Steel Corporation was formed?

A. They had a plate mill.

Q. A tin plate mill?

A. Oh, no.

Q. I meant to say a tin plate mill.

A. No; nothing like that. I think they had a mill on which they could roll some hoops and cotton ties.

Q. Where?

A. But they did not manufacture wire or pipe or tin plate.

Q. It was quite a small affair, was it not?

A. Yes; I think so.

Q. And relatively unimportant?

A. Yes, sir.

Q. I will go through this more in detail, because it is important: The tin plate business is an important one in this country, now, is it not?

A. It has grown to be a very large and important business; yes, sir.

Q. What percentage of the raw material of steel is used up in that business now, do you suppose?

A. Sheet and tin plate, or tin plate alone?

Q. Tin plate alone, I will ask about now.

A. I should say this year between 700,000 and 1,000,000 tons.

Q. What proportion is that of the total of semi-finished products? I want to get at the percentage of the semi-finished product that is used up in those mills, or in any other way, to give an idea of their comparative size.

A. I could not answer that, offhand. It ought to be a matter of record, however.

Q. Probably it is.

A. Yes. Those matters are all matters of record.

Q. At any rate, it is a very large and a very important business?

A. Yes; it is a very large and important business, and growing more so every year.

Q. The Federal had no tin plate mill at all, had it?

A. No, sir.

Q. Did the company have a wire mill?

A. No, sir.

Q. How important have wire mills become in the industry?

A. They have become very important.

Q. Is there any finishing production more important now than that of wire?

A. I think it practically exceeds any tonnage now, with the possible exception of rails.

Q. Is there any line of foreign steel business so important as that which concerns wire products? In other words, is not the American foreign trade in wire products greater than in any other steel products?

A. I think it exceeds any other finished line; yes, sir.

Q. And the Federal had no wire mill at all, had it?

A. No, sir; they had rod mills, but no wire mills.

Q. Did they have any steel hoop mills, except this little one to which you have referred?

A. I think they had a little one, to roll cotton ties and hoops and bands.

Q. How much of a mill was that?

A. That was a mill, I suppose, that would roll something less than 100 tons a day.

Q. That is rather insignificant nowadays, is it not?

A. It was a small mill; yes, sir.

Q. And that is an important business, is it not?

A. Yes, sir.

Q. Did it have a sheet steel mill?

A. It seems to me that they had, at one time, under lease, the Hammond Sheet Steel Company. I do not think they owned it, unless they owned it through selling sheet bars to them.

Q. You do not know whether they had or not?

A. I do not think they owned any.

Q. Did they operate any, at the time of the formation of the Steel Corporation?

A. No, sir; not at the time the Steel Corporation was formed.

Q. Is that an important finishing industry?

A. It is very important.

Q. And it is growing more so?

A. It is taking the place of wood; yes, sir.

Q. Has it been growing rapidly since 1901?

A. I think the sheet steel business practically doubles itself every seven years.

Q. Was it important in 1901? Had it already assumed some importance?

A. That was just about the time it started to grow enormously, and it has been growing that way ever since.

Q. The Federal had no tube mill, either, did it?

A. No, sir.

Q. What do tube mills make?

A. Pipe, tubes, tubular goods.

Q. The production of tubular goods is a finishing process, I believe?

A. It is a finished line; yes, sir.

Q. Had it become important in 1901?

A. Yes; that grows very fast.

Q. And it has been growing very rapidly since, has it not?

A. Oh, my, yes.

Q. And it consumes a large part of the semi-finished product of the steel mills, does it not?

A. An enormous amount of it.

Q. And the Federal had nothing of that kind at that time?

A. No, sir.

Q. Did the Carnegie Company have some finishing mills?

A. They had a good many finishing mills.

Q. They had a good many?

A. Yes. Their specialty was more in the heavier line.

Q. You told us, a little while ago, that the Federal Company did not have mills so located as to supply the eastern trade?

A. Yes, sir.

Q. The finishing mills of the Carnegie Company, which were acquired by the Steel Corporation, were so located as to supply the eastern trade?

A. The Carnegie mills, being located in the Pittsburgh district, would be the natural place to supply the eastern and export business; yes, sir.

Q. What would you say as to the location of the mills of the Tin Plate and the Steel & Wire Company in that respect?

A. Both the Steel & Wire and Tin Plate mills are very well located to take care of the entire trade of the country, and the export trade also.

Q. And well located with respect to the export trade, are they not?

A. Yes, sir.

MR. LINDABURY: That is all.

By MR. COLTON:

Q. Mr. Mudge, do you know as to whether, in 1899, the

Illinois Steel Company did not produce one-half of all the cotton ties used in the United States?

A. Well, if they did, it is news to me.

Q. Do you know whether they had a capacity sufficient to supply the entire country's needs at that time in cotton ties?

A. I never knew. I knew they had a mill that would produce cotton ties, but I did not think it was a large mill. I knew they sold some.

Q. How about hoops and bands?

A. I understood they rolled them all in the same mill.

Q. Have you been to that mill?

A. I cannot say that I ever saw that mill; no, sir.

Q. Have you sold hoops and bands in competition with that mill? I mean, prior to the formation of the Steel Corporation?

A. No.

Q. Had you sold cotton ties in competition with that mill?

A. I never handled cotton ties.

Q. Were you familiar with the cotton tie business prior to that time?

A. The same as I would be familiar with practically any line in iron and steel.

Q. Just generally familiar with it?

A. Yes.

Q. You have no familiarity by virtue of actual trade?

A. No, we did no cotton tie business.

Q. As regards the Federal Steel Company acquiring the Carnegie Company in order to be able to supply the eastern trade: Did it change the location of the Carnegie mills any, when they were acquired by the United States Steel Corporation?

A. How do you mean?

Q. The Carnegie Company supplied the eastern trade, I suppose, before it was taken over by the Steel Corporation, did it not?

A. It did not move its mills.

Q. It did not alter its location?

A. No, sir.

Q. What advantage was there?

A. No more advantage now than there was then. The mills are in the same place.

Q. The mills are in just the same place?

A. Yes, sir.

Q. It eliminates the competition between the Carnegie Company and the Illinois Steel Company?

A. I would not imagine that the Illinois Steel Company could possibly compete in the East or for export; but the Carnegie Company of course would compete in the West, at different times.

Q. The Carnegie Company could sell all over the United States, could it not?

A. They always did.

MR. COLTON: That is all.

By MR. LINDABURY:

Q. You say that the Carnegie Company could compete and did compete in the West. Was there ever a time when the Illinois Company could supply the whole western market?

A. No; I do not believe there was a time that Illinois could possibly supply the western market.

MR. LINDABURY: That is all.

THOMAS W. FITCH,

having been heretofore duly sworn, was recalled for further

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Fitch, you were questioned about a contract in regard to the sale of the stock of the Pittsburgh Wire Company to John W. Gates and others, when you were on the stand before.

A. Yes, sir.

Q. And you stated that you did not have the contract. I will ask you whether, since you were on the stand, you have

made any further search, and if so, if you have found the contract, and I will request you to produce it.

A. When the question was asked this morning, of course I did not have it with me; but after the adjournment for luncheon, I telephoned my office in Rankin and asked them to look it up, and they sent it to me.

Q. Will you produce it?

A. Yes. (Producing paper.)

Q. Is this the contract?

A. Yes.

Q. Is that an original or not?

A. It was executed in duplicate.

Q. And is this one of the original duplicates?

A. Yes, sir.

Q. Do you know the signatures to it?

A. Yes, sir.

Q. And you identify them?

A. Yes, sir.

Q. There are some pencil changes in the body of this contract. Will you examine them to see whether they were made before it was signed?

A. They were made before it was signed.

MR. DICKINSON: I offer this in evidence.

(The paper so offered and identified was thereupon marked Government Exhibit (Fitch) No. 141, October 10, 1912, and will be found in the volume of exhibits.

THE WITNESS: I wish to say that this contract was drawn up by Willis F. McCook, who was the attorney——

MR. DICKINSON: We do not care about that.

THE WITNESS: He can identify these signatures.

MR. LINDABURY: Will you let us put down our objections after we have read the contract?

MR. DICKINSON: Certainly.

MR. LINDABURY: The defendants object on the ground of immateriality and irrelevancy.

B. F. JONES,

a witness produced by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Dickinson:

Q. Where do you reside?

A. City of Pittsburgh.

Q. How long have you lived here?

A. Forty-four years.

Q. How old are you?

A. Forty-four years.

Q. With what company are you associated?

A. I am president of the Jones & Laughlin Steel Company.

Q. How long have you been president of that company?

A. Since 1901.

Q. How long have you been with the company?

A. Since 1891.

Q. In what capacity were you previous to your being president?

A. Treasurer. I was elected in 1899.

Q. State whether or not in the year 1900 you had an acquaintance with the ores in the Mesabi Range and the royalty that was being charged during that period on ores.

A. In 1901?

Q. No, in 1900 and the early part of 1901.

A. I was familiar in a general way in 1900, but more especially familiar with that matter in 1901.

Q. Were you in that region in that period?

A. Yes, sir.

Q. What was the object of your visit there?

A. At first just to look over the ore country in a general way, and to get an idea of what the ore country was, and afterward, to look for property.

Q. Did you look for property?

A. Yes.

Q. And considered the question of operations?

A. Yes.

Q. Did you at about that period, say in 1901, acquire any property for your company?

A. Yes, sir.

Q. Without giving precise dates, what part of the year 1901 did you acquire properties?

A. We were negotiating all through the early part of 1901, and finally closed for quite a large lot of ore in November, 1901.

Q. When did your negotiations begin?

A. They began in the winter of 1900 or the winter of 1901, I cannot recall just exactly which.

Q. So, as an outcome of your visit there for the purpose of looking into the ores and acquainting yourself with the character of the ores and their prices, your company did make negotiations which resulted in the acquirement of ore property?

A. It did.

Q. During the latter part of 1900 and the first part of 1901, state what were the prevailing prices for royalties in that region, on ores.

A. I would say the royalties varied considerably on account of the bonus paid, but I would say they averaged about twenty-five cents a ton.

Q. Did any of them run lower than that?

A. Yes. The grade of the ore had a great deal to do with that.

Q. So it was from twenty-five cents to a lower amount, according to the grade of the ore?

MR. REED: No, he said they averaged twenty-five cents, and so the statement in your question could not be right.

By MR. DICKINSON:

Q. Did your company pay during the latter part of 1900 or the early part of 1901 any greater royalty than twenty-five cents?

A. Yes, sir.

Q. What did you pay?

A. We paid as high as thirty cents.

Q. Did you pay any higher than thirty cents during that period?

A. That is, during the latter part of 1900 and the early part of 1901?

Q. Yes.

A. Not that I can recall.

Q. In addition to that royalty, did you pay any bonus?

A. Yes, sir.

Q. On what property did you pay as high as thirty cents?

A. A property called the Grant Mine, at Buhl, Minnesota.

Q. I believe you have stated that that was the highest you paid up to that time?

A. Yes.

Q. What bonus did you pay on that property?

A. We paid 25 cents, state royalty, and five cents additional for the lease.

Q. Did you pay any bonus in addition to that?

A. Yes.

Q. How much was that?

A. That was an indeterminate amount, because it was figured on three separate and distinct mines bought at the same time. The bonus was paid on the three mines.

Q. What bonus did you pay on the three mines?

A. Thirty, twenty and ten——

Q. That much bonus?

A. Oh, no. We paid $950,000 as a bonus for the three mines.

Q. What did you mean——

A. (Interposing) I thought you meant what the royalties were.

Q. Then you did pay those royalties?

A. Yes, sir.

Q. What was the aggregate estimated tonnage at that time of those mines, for which you paid that bonus?

A. Approximately 17,500,000 tons.

Q. One was the Grant mine?

A. The Grant, the Lincoln and the Columbia.

Q. What was the estimated tonnage of the Grant?

A. 10,000,000 tons.

Q. And of the Columbia?

A. 5,000,000 tons.

Q. And of the Lincoln?

A. It was 7,500,000. I see that my calculation was wrong there; I should have said 22,500,000 altogether.

Q. When you gave your estimate as to the aggregate were you mistaken?

A. Yes, sir.

Q. What should it be?

A. It should be 22,500,000 tons.

Q. What was the total amount of that premium you paid on all three? $950,000.

A. ~~$895,000~~. That was not pro rated at all.

Q. You took it together?

A. Yes.

Q. What was the character of the ore in the Grant mine?

A. A very good coarse Mesabi non-Bessemer ore.

Q. How was it situated as to the question of taking out economically?

A. It is a stripping proposition.

Q. A shovel proposition?

A. A shovel proposition, yes.

Q. What is the metallic content of that ore, dried?

A. It was about 55.

Q. Now, take the Columbia mine.

A. The Columbia was a poorer grade of ore. The iron was not so bad. It was 53 or 54. It ran very high in aluminum, which is a very detrimental thing in the blast furnace. It was also very wet.

Q. How about the Lincoln mine?

A. The Lincoln mine was a high grade Bessemer ore, running about the same in iron.

Q. How was that located?

A. That is an underground mine.

Q. You take it out with a shaft?

A. Yes, sir; a shaft.

Q. In the early part of 1901 give the range of the royalties that prevailed at that time for ore.

A. I would say the range was around 20 to 25 cents at that time.

Q. Mr. Jones, please state whether or not any mines of Jones & Laughlin are situated on any of the railroads controlled by the United States Steel Corporation.

A. Yes, sir.

Q. Are there any of those mines tributary alone to those roads?

A. Yes, sir. By "tributary" you mean under contract?

Q. No, I do not mean by contract. I mean have you any mines which are located on either of the roads of the Corporation, and not upon any other roads?

A. They can shift a road there to any mine, one road or the other.

Q. Either the Great Northern or any of the other roads?

A. Yes.

Q. So all your mines, then, are located so that either railroad can serve them?

A. Yes, sir.

Q. Have you any traffic agreements as to any of your mines which obligate the shipment of ore over any of the roads controlled by the United States Steel Corporation?

A. We have; yes, sir.

Q. What mine or mines of Jones & Laughlin are tied up with traffic contracts which obligate them to ship the ore over either or both of the roads, as the case may be, of the United States Steel Corporation?

A. The Lincoln Mine and the Meadow and Fowler Mines.

Q. How long do those contracts run?

A. The term of the lease.

Q. How long is that?

A. The leases of the Meadow and the Fowler and the Lincoln are fifty years. I suppose they would probably have thirty years to go.

Q. I intended to ask you the length of the lease on the Grant Mine.

A. Fifty years.

Q. And what is the length of the lease on the Columbia Mine?

A. Fifty years.

Q. Running from what time?

A. From about 1900 or 1901 or 1902; around there.

Q. What percentage of the ore that has been taken by your company out of the Mesabi Range from 1901 to 1910 inclusive, have you under these contracts obligating you, as you have stated, to ship ore over one or the other of the Corporation's roads?

A. We have shipped about 46 per cent of our ore over the Corporation roads so far.

Q. During the ten years?

A. Yes, sir.

Q. Out of your entire holdings there, if all should be shipped, what percentage would you be obligated to ship over the Corporation's road?

A. Approximately sixteen per cent.

Q. So up to this time you have shipped a larger amount than it would be if the whole were taken into consideration?

A. Yes; we have been shipping very heavily from the Lincoln mine, which is on a Corporation road.

Q. Because you wanted to use that ore?

A. Yes—Bessemer ore.

Q. So that has resulted in a larger amount during that period than if it was distributed over the whole holdings?

A. Yes, sir.

CROSS EXAMINATION,

By Mr. Reed:

Q. The Mesabi Range in the spring of 1901 was only seven or eight years old, was it not?

A. Well, the Mesabi Range started, really, about 1890 or 1891, or around there.

Q. The first shipment—

A. (Interrupting) About 40,000 tons in 1902, I think was the first.

Q. In 1892, you mean?

A. Yes, 1892.

Q. When the Mesabi Range was first developed, it was found, was it not, that the furnace men had great difficulty in using the ore because of the difference in its structure from that of the old range?

A. Very great difficulty. They all thought they could use a very small percentage only.

Q. And for that reason Mesabi ore was not generally considered very desirable?

A. That is correct.

Q. And the first leases and sales of Mesabi ore that were made in those early years, say the first five years of that decade, up to 1895, were made at extremely low rates, were they not?

A. Yes, sir; I so understand.

Q. Many sales were made of the fee for less than one cent per ton, were they not?

A. I could not answer that intelligently.

Q. Of course your acquaintance with the range does not go back as far as that, I presume?

A. No, not except general hearsay.

Q. You did not have—

A. (Interrupting) Any practical knowledge, no.

Q. You never were there as early as that?

A. No, sir.

Q. In the last five years of that decade, from 1895 to 1900, there was a gradual rise in the price of Mesabi ore, was there not?

MR. DICKINSON He just said he did not know.

MR. REED: I am asking him about the later period now.

THE WITNESS: That was 1895 to 1900.

MR. REED: Yes.

THE WITNESS: As I say, I was not familiar with the practical end of the ore prices then. Of course it did advance gradually as a matter of fact, as we were able to use it, yes.

MR. DICKINSON: We except to that as incompetent. He says it is hearsay.

By MR. REED:

Q. Let us take the period beginning with April, 1901, and fix that time in your mind. I might say that that is the time that the Steel Corporation was organized. Was there also a gradual rise in the price or in the prevailing rates of royalty for Mesabi ore after April, 1901; in other words, did this enhancement in price or royalty continue?

A. No, I would not say that it did to any great extent immediately. There was a great deal of undeveloped ore which was being bought on the market at that time, and people did not realize that the ore was not inexhaustible.

Q. Then the formation of the Steel Corporation did not result in any sudden rise in the royalties for Mesabi ore?

A. I could not say that it did.

Q. Can you not tell that it did not; do you not know that it did not?

A. It did not immediately.

Q. Since 1901, or, rather, since your acquaintance with the range began, in 1900, is it not true that all of the large steel companies, without exception, all of the companies which have furnaces in the district north of the Ohio River, have been steadily picking up Mesabi ore whenever they could?

A. Yes, sir.

Q. You are doing it yourself, are you not, up to the present time?

A. Yes; up to the present time.

Q. Mr. Jones, I think I heard you aright when you said that about 16 per cent of the ore reserves of your company are tied up for contract for shipment over one or the other of the two Steel Corporation roads. Is that correct?

A. That is approximately correct.

Q. And is the remaining 84 per cent of your Mesabi ore tied up under similar contracts with the Hill Road?

A. The remaining ore that we have under a traffic contract—we have two mines that are not under contract with any railroad, but of the mines that are under contract, 16

per cent are with the Corporation roads and 84 per cent with the Great Northern.

Q. Can you give us any statement or estimate of that proportion of all your ore on the Mesabi Range which is under contract for transportation over the Corporation roads?

A. I do not exactly understand that question.

Q. You have given us that percentage of the ore which was tied up to one road or the other. Now can you tell us what percentage of all your ore on the Mesabi Range that 16 per cent of the contracted ore constitutes?

A. I could not. Those two mines are reserve mines. It would be impossible to tell what arrangement we may make for the transportation of that ore later.

Q. They have not been completely drilled, I suppose?

A. They have been fairly well drilled, but not opened up.

Q. In your opinion what percentage of all your ore on the range will those two mines constitute?

A. I should say not ten per cent.

Q. Though, if you produced from all your Mesabi mines uniformly each year, only 16 per cent of your production, outside these two mines that are free, would travel over the Corporation Roads, as a matter of fact you have been during recent years shipping almost one-half of your ore from those mines which were tied up to the Corporation roads?

A. Yes, sir.

Q. Referring to these contracts, it is true, is it not, that they oblige you to ship over the Steel Corporation's road only so long as that road continues to offer as good service and as favorable rates as any competitor?

A. Yes, sir.

Q. You are not obliged to ship over the Steel Corporation road unless it meets the lowest rates of its competitors?

A. No, sir.

WILLIS L. KING,

having been heretofore duly sworn, was recalled for further

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. I understand through Mr. Colton that you desire to make a correction in your testimony that you gave the other day. Is that a fact?

A. Yes. I asked permission to come and state that I perhaps made a mistake in the exact date as to the time when all agreements among the plate and structural manufacturers ceased. I fixed that date in my testimony the other day at the end of the formal pools, that had a percentage and penalty, which were disbanded in 1904. On thinking over the matter further I thought it might be possible, inasmuch as the commissioner, I find, was continued until September, 1906, and then dismissed finally, I thought perhaps it might be possible that that date should be in the summer of 1906 rather than at the beginning of 1905.

Q. What correction do you want to make, if any?

A. I want to correct the possibility of a mistake which I may have made in saying that after 1904 there were no agreements of any kind among the manufacturers of plate and structural material.

Q. Just state, then, what your best recollection is on that subject.

A. I am anxious to do that, Judge, and as a matter of fact, it is only a recollection; but I had occasion to notice, since my testimony here, that the Commissioner, Mr. Temple, was continued until August, 1906, and it is my impression that perhaps we did not do things in that interim from 1904 to that date on the plans laid down strictly by our attorneys, in that we could not agree to anything but merely state our opinion when meeting together, our business, condition of business and what we were charging for our material, which we did afterwards.

Q. Now, as I understand you, it appears, although I have not read your testimony, that you have stated that they did not continue after 1904.

A. In the shape of pools, yes sir.

Q. And you do not want to stand by that positive statement, and it may be that they continued longer?

A. Not in the shape of a pool at all; it would not be any more—well, the usual term for those things, it might be called, a gentlemen's agreement. There was no percentage, absolutely all that stopped in 1904.

Q. How long did what you call a gentlemen's agreement continue——

MR. SEVERANCE: He does not say that there was one. He says it might be, possibly, that there might have been something of the kind.

MR. DICKINSON: Well, what do you say about it, Mr. King, as to the fact, so far as you know?

THE WITNESS: I only desire to say that I might be mistaken as to those two dates. I might be. It is only a matter of recollection at best.

By MR. DICKINSON:

Q. Were there any things such as you have described as gentlemen's agreements, and if so, how long, according to your recollection, did they continue?

A. Well, after the dissolution of the formal pools, as I have testified, we continued meetings, and perfectly properly, and we had a commissioner for statistical purposes, and I say that it is probable that in that interim from 1904 until, say, the summer of 1906, we did not carry on those things in the strictly legal sense that we did later, after that date.

Q. Is that all that you mean to testify as to what was possible, and have you no positive recollection as to whether you did or did not?

A. No, I have not.

Q. And you simply do not want to be committed to saying, as you said before, that they ceased at a certain time, and you leave it open; you may have been mistaken?

A. That is right.

Q. You used the expression "gentlemen's agreement".

A. Yes, sir.

Q. What did you mean by that?

A. In the ordinary acceptation of that term it means a lot of gentlemen, presumably gentlemen, get together and talk about their business, and after discussing conditions agree among themselves, without any penalty or anything else but a moral obligation, that they will charge so much for their product.

Q. Did you have such agreements as that?

A. I am not quite sure about that. That is after 1904. I say that there is a possibility that I am wrong in my dates as to the exact time of the stopping of those things.

Q. And if you had them after that you say you are not sure?

A. Certainly, after the summer of 1906, I am absolutely sure.

MR. SEVERANCE: That you did not?

THE WITNESS: That we did not.

By MR. DICKINSON:

Q. Have you any recollection as to how long those gentlemen's agreements continued?

MR. SEVERANCE: He says he does not know that there were any. I object to the form of that question, because by the question it is assumed that he has stated that there were such gentlemen's agreements.

By MR. DICKINSON:

Q. Well, I will ask this question. Did you or not say that there were such gentlemen's agreements after any period?

A. Oh, there have been from time immemorial. That was the usual form.

Q. Did you have any after 1904?

A. No sir. Well, not in the form of formal and exact agreements. Judge, I am trying to tell you, I think very awkwardly, but I will really ask permission to say that I was not entirely sure as to the date when those actual agreements stopped, whether it was in 1904, when the formal pools ceased

operation, or whether it was a little later, say in 1906.

Q. And so far as your testimony goes, you say they may have continued later?

A. They may have.

MR. SEVERANCE: But not later than 1906.

By MR. DICKINSON:

Q. Are you speaking of those that you participated in?

A. Oh, entirely.

Q. You are not speaking of anything else that may have happened when you were not present?

A. No. I am talking of the arrangements that I happened to be connected with.

Q. Mr. Colton wants me to ask another question. To the best of your recollection, when did the gentlemen's agreement that you participated in, if you did participate in any, that you have described, cease?

A. The formal——

Q. I am not talking about the formal ones now.

A. What I would like to testify to is that in thinking this matter over I am not entirely certain as to whether the form of a meeting prescribed by our lawyers as proper and legal, and which I described the other day—I think you both know what I mean—I am not entirely certain whether they started immediately in 1904, or a little later.

Q. Suppose the stenographer reads the question.

(The pending question was repeated by the stenographer.)

A. Well, they either ceased in the latter part of 1904, or else in the summer of 1906.

Q. And that is all you recollect about it?

A. Yes. I do not want to put myself in the position of fixing a date that may be wrong. I want to say that I have some doubt about it.

Q. Can you give no more approximate date than that?

A. It is either one or the other of those two dates.

Q. Which would you say it was, if you know?

A. I do not know, Judge.

Q. You do not know?

A. No, I do not. I do not want to say the date positively that I have some doubt about, some possible doubt about. That is all.

MR. SEVERANCE: No questions.

(Witness excused.)

MR. DICKINSON: Petitioner offers in evidence copy of a letter of February 17th, 1898, written by Julian Kennedy and Robert Forsyth to Mr. C. H. Coster, J. P. Morgan & Company, New York, and with it copies of the unsigned report on the values of the wire properties, the list of the individual valuations, and the note in regard to depreciation referred to in said letter.

It is agreed by the defendants represented by Messrs. Lindabury, Depue & Faulks that said documents may be received as if they were the originals, that said Robert Forsyth is an engineer residing in the city of Chicago, that he and Julian Kennedy if called would testify that they made the valuations as set out in said papers at the instance of J. P. Morgan & Company and in the manner set out in said papers; that in their opinion they were correct, and that they transmitted said letter and the other papers named to J. P. Morgan & Company on February 17, 1898, and this statement may be used to the same effect as if they had so testified and shall be subject to contradiction in the same way.

(The papers so offered and identified were thereupon marked Government Exhibit No. 142, October 10, 1912, and will be found in the volume of exhibits.)

MR. DICKINSON: Petitioner offers in evidence statements furnished by the United States Steel Corporation in response to subpoenas, as follows:

First, paper entitled "Illinois Steel Company, production, calendar year 1900", marked Exhibit No. 143.

Second, statement entitled "Illinois Steel Company, gross sales for the calendar year 1900," marked Exhibit No. 144.

Third, statement entitled "Carnegie Steel Company, Statement of sales for the year 1900," marked Exhibit No. 145.

Fourth, statement entitled "American Steel Hoop Company, statement of sales for the year 1900", marked Exhibit No. 146.

Petitioner also offers in evidence memorandum of agreement made April 6, 1901, between C. S. Trench, and Richard Lewis, of one part, and the American Tin Plate Company of the other part, and it is agreed in behalf of the defendants represented by Messrs. Lindabury, Depue & Faulks that said document was executed by said parties and shall be received as if it were the original executed contract, and the schedule therein referred to may be omitted, but that the exhibit shall be subject to objection on account of irrelevancy or immateriality, the same being marked Exhibit No. 147.

Petitioner also offers in evidence an agreement made April 30, 1900, between James P. Kennedy of the first part and the American Bridge Company of the second part, and it is agreed on behalf of the defendants represented by Messrs. Lindabury, Depue and Faulks, that the said document was executed and shall be received as if it were the original executed contract, subject to objection for immateriality or irrelevancy, the same being marked Exhibit No. 148.

STIPULATION.

It is stipulated for petitioner and for those defendants represented by Messrs. Lindabury, Depue and Faulks, that at or about the same time that the American Bridge Company entered into the foregoing contract with James P. Kennedy, a stockholder of the Youngstown Bridge Company, it entered into contracts identical in all substantial provisions with the following parties:

Frederick H. Schmidt, a stockholder of the Youngstown Bridge Company.

Frank M. Wyant, a stockholder of the Wrought Iron Bridge Company.

J. G. Wagner, a stockholder of the J. G. Wagner Company.

Andrew Onderdonk and Charles Macdonald, partners in the Union Bridge Company.

Jesse W. Walker, a stockholder of the Shiffler Bridge Company.

William H. McCord and Estate of Andrew J. Post, partners in Post and McCord.

Ed. A. Merydith, T. M. Nelson and A. Buchanan, stockholders in the Pittsburgh Bridge Company.

H. P. Hepburn, a stockholder in the New Columbus Bridge Company.

Moritz Lassig, a stockholder in the Lassig Bridge & Iron Company Works.

Frank S. Moore, Everett B. Vawter, and Wallace Marshall, stockholders in the LaFayette Bridge Company.

William T. Koken and H. Stoffregen, stockholders in the Koken Iron Works.

E. A. Perkins and J. S. Perkins, partners in the Horseheads Bridge Company.

Elnathan Sweet, George P. Hilton, Elnathan Sweet, Jr., stockholders in the Hilton Bridge Company.

Frank Conger, a stockholder in the Groton Bridge and Manufacturing Company.

Geo. M. Gillette, L. S. Gillette and Frank Llewellyn, stockholders in the Gillette Herzog Manufacturing Company.

Robert Grimes, Walter Hawhurst, Everett E. Buchanan and William S. McCord, stockholders in the Elmira Bridge Company, Limited.

Carl Meyer and Robert D. Wilson, partners in the Buffalo Bridge and Iron Works.

Charles N. Jarvis and Frank L. Wilcox, stockholders in the Berlin Iron Bridge Company.

Paul K. Richter, a stockholder in the American Bridge Works.

STIPULATION.

It is further stipulated between counsel for the petitioner and the defendants represented by Messrs. Lindabury, De-

pue and Faulks, that at or about the same time, when the American Bridge Company entered into the foregoing contracts, it also entered into contracts with William Sellers and John Sellers, Jr., stockholders in the Edge Moore Bridge Works, with John F. Alden, partner in the Rochester Bridge & Iron Works, and with the Lassig Bridge & Iron Works, a corporation, and it is agreed that the contracts, copies of which are marked exhibits Nos. 149, 150 and 151, and herewith offered in evidence by the petitioner were executed by the said parties, and that the said copies shall be received as if they were the original executed contracts, subject to objection for irrelevancy and immateriality.

Petitioner also offers in evidence an agreement dated June 28, 1905, between Carnegie Steel Company and Pittsburgh Steel Company, with supplemental agreement contained in a letter of even date; and it is agreed between the petitioner and the defendants represented by Messrs. Lindabury, Depue and Faulks that the said agreements were executed, and that copies of the same marked respectively Exhibits Nos. 152 and 153, shall be received as if they were the original executed agreements, but shall be subject to objection on the ground of immateriality or irrelevancy.

Mr. Lindabury: Defendants' counsel object to the said several exhibits, marked Government Exhibit No. 142 to Government Exhibit No. 153, both inclusive, on the ground of immateriality and irrelevancy, and they make the said objection on behalf of each of the defendants they represent severally.

(The papers so offered in evidence and identified were thereupon marked "Government Exhibit No. 143" to "Government Exhibit No. 153", both inclusive, October 10, 1912, and will be found in the volume of exhibits.)

Mr. Dickinson: Petitioner offers in evidence publication entitled "Directory of the Iron & Steel Works of the United States, 14th Edition, corrected to April 1, 1898, published by the American Iron & Steel Association, Philadelphia, No. 261 South Fourth Street, 1898"; and also the publication entitled

"Supplement to the Directory of the Iron and Steel Works of the United States", compiled by the American Iron & Steel Association, Second Edition, corrected to August 15, 1900, published by the American Iron & Steel Association, No. 261 South Fourth Street, Philadelphia, 1900.

(The publications so offered in evidence were thereupon marked "Government Exhibit No. 154" and "Government Exhibit No. 155.")

Mr. Lindabury: We object to the reception in evidence of said publications as irrelevant, immaterial and not legal or competent evidence of any matter that may be contained therein.

Stipulation.

Mr. Dickinson: It is stipulated by counsel for the petitioner and counsel for those defendants represented by Messrs. Lindabury, Depue and Faulks, that neither of said publications need be printed unless required by the rules or direction of the Court; and that the originals may be sent up and that said publications and duplicates thereof may be used, with permission of the court, in lieu of copies of the same printed in the record.

(Thereupon, at 5:30 o'clock p. m., the further hearing of this case was adjourned to a date and place to be subsequently agreed upon.)

THIRTIETH DAY.

Room 309, Federal Building,
Pittsburgh, Pennsylvania,

October 29, 1912.

The hearing was resumed at 10:30 o'clock a. m., before Special Examiner Henry P. Brown.

Present on behalf of the United States, Mr. Dickinson, Mr. Colton and Mr. Corneau.

Present on behalf of the defendants, Mr. Lindabury, Mr. Severance, Mr. Bolling and Mr. Reed.

HENRY WICK,

a witness called by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Mr. Wick, where do you live?

A. Youngstown, Ohio.

Q. What is your age?

A. 66.

Q. Are you at present engaged actively in any business?

A. No, sir; I am not.

Q. Were you, at any time, associated with the Ohio Steel Company?

A. Yes, sir.

Q. In what capacity?

A. As president.

Q. For how long a period?

A. From May, 1892, until 1899.

Q. That was the time it was taken over by the National Steel Company?

A. Yes, sir.

Q. Did you hold any office with the National Steel Company, and if so, during what period?

A. I was chairman of the executive committee of the National Steel Company, and vice-president of the National Steel Company.

Q. For how long?

A. From the early spring of 1899 until the early spring of 1901, about the time it went over into the Corporation.

Q. That is to say, the time it was taken over by the United States Steel Corporation?

A. Yes, sir.

Q. Did you hold any position after that with the United States Steel Corporation?

A. No, sir.

Q. Prior to the organization of the National Steel Company, namely, February 4, 1899, what was the ingot capacity of the Ohio Steel Company, about?

A. Around 2,000 tons, somewhere from 1,600 to 2,000 tons a day.

Q. What would that make annually?

A. About 300 times that.

Q. Approximately 600,000 tons a year?

A. I would think so. Something like that. I might explain, Judge, that of course that would not be the average over the period that we were in operation, because the first month we ran, we made 2,000 tons of steel.

Q. That was the first month you ran?

A. Yes, sir.

Q. After you had gotten in runing order, however, your annual capacity was approximately what?

A. It would be probably 250 times 1,600 to 2,000 tons, whatever that is. I do not think, over the period we ran the Ohio Steel Company, we would average more than 250 working days in the year, perhaps.

Q. Please state, generally, what steel works the Ohio Steel Company had at the time of the organization of the National Steel Company; what character of works they had, at the

time the Ohio Steel Company was taken over by the National Steel Company.

A. They had two converters and a blooming mill, and a billet mill, and a mill for making sheet and tin plate bars, which was a part of the billet mill.

Q. Was the construction there of such a character or not that a rail department could be introduced?

A. Yes, sir; it was.

Q. As a matter of fact, state whether or not a rail department was added.

A. It can hardly be said that it was added. The mill was originally constructed with a view of some time making rails, if it was thought advisable; but, of course, a considerable part of the plant necessary to make rails was not a part of the mill at that ime.

Q. Then please state whether the original plan, so far as it contemplated the making of rails, was carried out at a later period.

A. I think it was; yes, sir. Not while the Ohio Steel Company——

Q. I understand.

A. (Continuing) But after the National Steel Company acquired it, it was completed, and rails were made.

Q. And rails were made?

A. Yes, sir.

Q. To what extent could the National Steel Company have utilized its ingot capacity in making rails, if it had desired to put its entire product into rails?

A. I should say three-quarters, or something like that.

Q. A certain portion of the ingot is lost, is it, in manufacturing, that is not adapted for use in rails?

A. It is not lost, but in those days it was not considered so well calculated to make rails, or not as good rails as the remainder of the ingot.

Q. It was cut off, was it, in that process?

A. It was sheared.

Q. Except what was sheared, state whether your entire ingot capacity could have been converted into rails.

A. This was a part of the ingot capacity that was sheared

off and run into a product that could be utilized, notwithstanding it was not suitable for making rails.

Q. But the balance, under the character of your plant, could be used for rails?

A. Yes, sir; practically it could.

Q. Can you state about when your plant was adapted for making rails?

A. After the National Steel Company acquired it?

Q. Yes.

A. It must have been a very short time before the property went over into the corporation.

Q. Into the United States Steel Corporation?

A. Yes. I can not remember the exact date.

Q. You cannot give the exact date?

A. No, sir; I can not.

Q. Had or had not the Ohio Company begun the erection of two blast furnaces before it was taken over by the National Company?

A. We had, as I remember, one blast furnace under construction, and another contemplated; but I do not think there had been any work done on it.

Q. Were or were not they completed by the National Steel Company?

A. I do not believe that they, either of them, were in blast when we went over.

Q. When you went over how?

A. I may be mistaken about that. When we sold to the National Steel Company, I mean.

Q. But, after you sold to the National Steel Company?

A. Oh, yes.

Q. Both of these were completed and put into operation by the National Steel Company?

A. Yes, sir.

Q. How many blast furnaces did the National Steel Company have there at the Ohio Steel Company's plant when it was taken over by the United States Steel Corporation?

A. I think four were completed.

Q. What was their capacity ?

A. I should say an average of between four hundred and five hundred tons, each furnace.

Q. Between four hundred and five hundred tons a day?

A. Yes, sir.

Q. State whether or not the National Steel Company, before it was taken over by the United States Steel Corporation, had made and sold rails in interstate commerce.

A. I think they did, sir.

Q. That is your recollection?

A. Yes, sir.

Q. Do you recall now where those rails were sold?

A. No, sir.

MR. LINDABURY: I did not understand the witness to say that he recollected what you assume in your question he said. I think he said that he did not recollect.

MR. DICKINSON: I asked him according to the best of his recollection.

MR. LINDABURY: If he means to say that he recollects they did, all right.

(The last few questions and answers were repeated by the stenographer.)

THE WITNESS: That is my recollection, that they made some rails.

By MR. DICKINSON:

Q. Please state whether or not the National Steel Company, at its Youngstown plant, and prior to the taking over of the National Steel Company by the United States Steel Corporation, was preparing for the development of an open-hearth plant at Youngstown; and, if so, what was the capacity?

A. If there was any sort of a plan, it was not matured, at all, as I remember, at that time.

Q. What do you mean by saying that it was not matured—that you were not actually carrying it out?

A. I do not think that they had undertaken to build any plant at that time.

Q. State whether or not you had employed engineers or an engineer for the purpose of preparing plans.

A. We had engineers all the time employed, and it is quite likely that plans were being developed; but I am not certain about that. There was not very much done, I think.

Q. I will ask you whether or not your company, in the early part of 1901, and before it was taken over by the United States Steel Corporation, employed Mr. Julian Kennedy as consulting engineer for the purpose of the development of an open-hearth plant at Youngstown.

MR. LINDABURY: Objected to as leading.

A. I must say that I cannot recall that. I ought to explain, perhaps, that that particular part of the business of the National Steel Company was not up to me. I did not have it in charge so much as some other parts of the business. I can say, however, that Julian Kennedy was employed by the Ohio Steel Company to build their works, and he might have followed on into the other company; but, as a rule—

By MR. DICKINSON:

Q. (Interposing) Have you any recollection at all as to any plans in regard to establishing an open-hearth plant at Youngstown by the National Steel Company, before it was taken over?

A. I have no recollection of plans, but I know it was my thought, and I think it was the thought of the National Steel Company, to erect an open-hearth plant at the Ohio Works; but I do not recall just how far it proceeded up to the time we went over into the United States Steel Corporation.

Q. State whether or not that matter had been taken up officially by the officers and directors.

A. I cannot state, I cannot recall.

Q. I call your attention to the minutes of the National Steel Company, which have been offered in evidence, and particularly to the date of February 14, 1901, at page 811 of the transcript of the record, Government Exhibits, Volume No. 2, and I ask you to read there.

MR. LINDABURY: I object to the minutes being shown the witness, the same being a paper not made by the witness. So far as it appears, he has never seen it before, and I object

to its being shown to him for the purpose of refreshing his recollection.

By Mr. Dickinson:

Q. You were a member of the board, were you not?

A. Yes sir.

Q. And a member of the executive committee?

A. Yes sir.

Q. Now I will ask you to read that extract right there, dated February 14th.

Mr. Dickinson: (Addressing Mr. Lindabury): The minutes show that he was present.

The Witness: Do you want me to read this aloud?

By Mr. Dickinson:

Q. Yes; just read it aloud.

A. (Reading): "February 14, 1901.

"Mr. Leeds moved that Mr. Julian Kennedy, as consulting engineer be instructed to start through our engineer corps the development of an open-hearth plant at Youngstown, capable of making 3,000 tons per day, so laid out that 1,000 tons capacity per day can be built at once, and the remainder added.

"This was seconded by Mr. Reid, and carried, all voting aye except Mr. Gilbert."

I do not remember anything about it.

Q. You do not recall that?

A. It was, in any event, just before the corporation took the property over, February 14th—

Q. The corporation was formed in April; that was February 14th?

A. Yes. Well, now, I have a general recollection that an open-hearth plant was under contemplation, and I think some time before this, by the Ohio Steel Company. We always had it in view—that some time we would have to have or should have an open-hearth plant there.

Q. When you say "Under contemplation" you mean under contemplation by whom?

A. Perhaps more particularly myself, and our superintendents, than any one else.

Q. Well, you were a member of the executive committee?

A. Yes.

Q. And also president of the company?

A. I am talking about—

Q. (Interposing) The Ohio Company, I understand.

A. More particularly about the Ohio Company.

Q. Yes, the Ohio Company. As far back as that time, then, you say you had in contemplation the construction of an open-hearth plant?

MR. LINDABURY: I object. He did not say the company had—

MR. DICKINSON: I did not say that the company had, either.

MR. LINDABURY: And he had no power to do it alone.

MR. DICKINSON: I said, "You had under contemplation."

MR. LINDABURY: Contemplation is not the proper word.

MR. DICKINSON: Please read the question.

(The stenographer repeated the question as follows):

"Q. As far back as that time, then, you say you had in contemplation the construction of an open-hearth plant?"

THE WITNESS: I can say that I thought an open-hearth plant was necessary, probably a long time before it was brought before the Board; the superintendent and I probably thought so, and I think we did talk of those things ahead.

By MR. DICKINSON:

Q. Well, was it brought before the Board?

A. To illustrate that, I remember, if I may be allowed—

Q. I would like you to answer the questions. Of course if you want to state any facts in connection with it, that would be proper, but a mere illustration would hardly be responsive to my question. If you have not answered the question in the way you desire to, of course I am willing for you to do so.

A. I do not think that the matter of building an open-hearth plant had been considered seriously by the Board very

long before we went over into the United States Steel Corporation.

Q. Have you any recollection contrary to what is recited in that minute?

A. I do not recall that the matter of an open-hearth plant was seriously considered before we went over into the Corporation; that is, not seriously considered by the body, by the Board.

Q. That does not answer the question. The question is, have you any recollection contrary to the facts recited to which I have called your attention?

A. I have not any recollection about it, Judge.

Q. Very well; that is what I want to know. Mr. Wick, from the time the Ohio Company was acquired by the National Steel Company, and up to the time that the National Steel Company was taken over by the United States Steel Corporation, what products were made at that plant?

A. At the Ohio plant?

Q. No; I will say by the National Steel Company. What products were made by the National Steel Company and sold by it in interstate commerce?

A. You do not mean at the Ohio plant?

Q. Everywhere. You were an officer of the National Steel Company?

A. Yes, sir.

Q. That is broad enough, then, to cover it all.

A. Well, as I remember, the National Steel Company manufactured slabs, blooms, billets, sheet and tin plate bars, and I think the Mingo Junction plant of the National Steel Company manufactured some, what we call rods and bars.

Q. State whether or not it sold those manufactured articles in interstate commerce.

A. I think it did, sir.

Q. What companies, during that period, were the principal competitors in interstate commerce of the National Steel Company?

A. Jones & Laughlin; the Federal Steel Company, to some extent; the Pennsylvania Steel Company, perhaps; the

Bethlehem; the Cambria. I do not at the moment recall any more.

Q. I will ask you how about the Carnegie Company?

A. Yes, the Carnegie. They, of course, were the greatest, they were the largest manufacturers.

Q. How about the Illinois, before it was taken over by the Federal?

A. I think I mentioned the Illinois, that it probably was somewhat of a competitor; but it was a little out of range for our products.

MR. LINDABURY: You mentioned the Federal. I suppose you meant the Illinois?

THE WITNESS: Yes, sir:

By MR. DICKINSON:

Q. Did you have any control of the matter of sales?

A. I looked after the sales perhaps more than any other part of the business.

Q. In what territory, during that period, did the National Steel Company sell billets?

A. You mean sell its entire product?

Q. No; not its entire product; in what territory did it sell billets—any billets.

A. It sold billets through the State of Ohio and western Pennsylvania, and, I think, into West Virginia somewhat.

Q. How about Indiana?

A. I do not recall any place in Indiana. It may have sold steel in Indiana.

Q. Was there any reason, that you know of, why you did not sell in Indiana?

A. No, sir.

Q. You do not recall that you did not sell? Do you or do you not?

A. I do not recall any place where we did sell, at this moment; that is, billets you are talking about now?

Q. What do you mean by not recalling any place? You mean the particular place?

A. Yes; I say I do not recall any particular place where steel was sold in Indiana.

Q. In Indiana?

A. Yes.

Q. But if you had sold in Indiana, who would have been your chief competitor?

MR. BOLLING: That is objected to. It is not proven that he has sold in Indiana. It is purely speculative. He has said that he does not recollect ever having sold there at all.

MR. DICKINSON: My question is, who would have been his chief competitor if he had sold there.

MR. BOLLING: That is purely a hypothetical question. There is no basis for a hypothetical question here, Judge.

MR. COLTON: They might have kept him out.

MR. BOLLING: He has not shown that they did keep him out, or that they ever attempted to do so.

MR. DICKINSON: If he had sold in Indiana, I want to know who his chief competitor would have been.

MR. LINDABURY: The question could be covered by asking who sold principally in Indiana.

MR. BOLLING: The question might as well be asked about New Mexico or California.

We object to the question as incompetent.

(By request the stenographer repeated the question under discussion as follows:)

"Q. But if you had sold in Indiana, who would have been your chief competitor?"

THE WITNESS: I would say this, that it would be pretty difficult to say who our chief competitor would have been, when I have not any definite place where the sales were made in Indiana. I do not recall any place.

By MR. DICKINSON:

Q. State whether or not there was any manufacturer of billets situated more favorably on account of rates to supply the Indiana territory than your company was, and if so, what.

A. It would depend on what part of Indiana you are speaking of. If it were in the eastern part of Indiana, I do not think there would be. If it were in the western part of In-

diana, I think the Illinois Steel Company would be more favorably situated.

Q. What was the state of the steel market as to prices during the latter part of 1900?

A. There was quite a depression during, I think it was, the latter part of 1900, a shortage of demand.

Q. What was the character of the competition at that time?

A. It was as competition always was, to my recollection.

Q. How is that?

A. It was just as competition had always been, in my entire career as a manufacturer; a natural competition.

Q. I will ask whether or not there was any price cutting in the latter part of 1900.

A. Well, I do not know as I quite understand what you mean by "price cutting." There was a decline, and I suppose that the competition that prevailed was accountable for the decline, partly, and lack of demand.

Q. A decline in what?

A. A decline in the prices of steel.

Q. A decline in prices?

A. Yes, sir.

Q. State whether or not the prices that prevailed in the latter part of 1900 were variable as between various companies, or uniform.

A. I think they were uniform. I think it is a natural result of a general advance and better demand that trade goes along together; and, as it declines, it must follow together.

Q. You say there was a falling off in prices during that period?

A. A falling off in demand, likewise.

Q. And a falling off in demand, likewise?

A. Yes, sir.

Q. You say that there was also, so far as you know, a uniformity of prices among competitors?

A. No more uniformity than there is in the natural law of supply and demand.

Q. What is the natural law of supply and demand, as you use that expression?

A. If the demand is as great, or greater than, the supply, prices usually prevail high. If the reverse, they prevail lower.

Q. Is there any natural law that makes the prices of competitors uniform?

A. Yes, sir; practically so. If one finds that he does not get the business at the price that he would like to get it for, he is compelled, by the law of supply and demand, to get a less price, if he wishes to secure the business.

Q. A less price than what?

A. Less than the price that has prevailed previously.

Q. A less price than that at which others are selling at that time?

A. No, sir, the same price. It resolves itself into that, through competition.

Q. Through competition?

A. Yes, sir.

Q. Do you mean to say that, through competition, there is a natural law that brings a uniformity of price?

A. Yes, sir; I do.

Q. How do you explain that? I would like to have you explain that.

A. Well, sir, at the time we started the Ohio works, for instance, there was a very slack demand for steel billets and the product that we made. We sold that product as low as thirteen or thirteen and a half a ton, and it was because there was a lack of demand, and therefore the prevailing price was put at what we could get for it. That is what I mean.

Q. Did you sell following a prevailing price, or did the prevailing price follow your sales?

A. I think we followed the prevailing prices, or attempted to.

Q. You followed the prevailing price?

A. Yes; and got as near to the prevailing price as we could, or more than the current price, and if——

Q. Now I want to ask you——

MR. LINDABURY: One moment, Judge. You interrupted the wtiness. He is giving some valuable philosophical information, and I do not think he was quite through.

THE WITNESS: I think I had finished.

MR. LINDABURY: I will ask the stenographer to read the answer.

(The stenographer repeated the last answer of the witness.)

THE WITNESS: If possible, we would get more than the current price; but we did not do it very much.

MR. LINDABURY: Because you could not?

THE WITNESS: Because we could not.

BY MR. DICKINSON:

Q. Do you mean to say that, when there was a falling off in prices, they fell off as to all competitors at the same time? Is that what you mean to say, or not?

A. Yes, sir. I think that the conditions were the same, then, as they usually are, that when there is a slack in demand, the prices usually decline; and when there is an active demand, the prices naturally advance.

Q. Do they decline at the same time and all at once for all competitors for the same business?

A. Just as soon as they get out and get after business and find that it is offered at a less price than they have been getting, it declines.

Q. You mean it declines all at once as to all of them?

A. I do not know that it does to the minute, or anything like that, Judge; but it gradually seeks its level all the time, either high or low.

Q. You mean, then, that the level of all competitors goes down at one time?

A. Practically at one time; as nearly at one time as is possible in sending out your agents or salesmen to sell goods. They find that their competitor is making, perhaps, a lower price or a higher price, and these reports come back to the headquarters and an endeavor is made to get the highest price possible; and, possibly, if there is any margin of profit

in it, to meet the market, whatever it may be, and go on with the business.

Q. If these agents do find out that others have sold at a lower price than that at which they are selling, state whether or not that is a cutting of the price on the part of those who thus sell lower.

A. I suppose that term is used.

Q. I will ask you whether or not that term was used.

A. I think the term of cutting prices is a common one.

Q. It is a common one?

A. Yes, I think so.

Q. I will ask you whether or not, in the latter part of 1900, there was upon the part of the competitors in the steel business any cutting of prices.

A. Well, now, I would say cutting of prices would mean if there was an arrangement between you and your competitors to ask for a fixed price, and you did not live up to that arrangement, and sold for less, you would be cutting prices; but I would say that if a manufacturer was going on, in a legitimate way, to do his business, and he found his competitors selling for less than he had been receiving, and he would meet those conditions, it would not necessarily be cutting a price. Cutting a price means, in my mind, doing differently from what you agree to do or understand.

Q. So that it is in that sense that you have been answering in regard to my inquiry as to cutting prices, is it?

A. I do not know that I understand you, Judge.

Q. I asked you about cutting prices. Now you have defined, as I understand you, your interpretation of cutting of prices. I merely ask you now whether the answers which you have given heretofore in regard to my inquiry as to cutting of prices were in the light of this interpretation that you have just put upon cutting of prices.

MR. LINDABURY: I object to that question. The witness has given no answer that brings that definition into it.

MR. DICKINSON: Let him answer the question.

THE WITNESS: I do not consider that there was cutting of prices during this period.

By Mr. Dickinson:

Q. Was there competition?

A. Yes, sir.

Q. Were some people selling at lower prices than had been the usual market quotations?

A. There had been a falling off in prices from a high level. For instance, I can illustrate it, perhaps: At one time, a short time before we sold to the National Steel Company, we were buying pig iron for $9.00. That pig iron went to $20.00, $25.00 or $26.00. It dropped back to $18 or $19, and then on back to $15. It was the same with the product that we made.

(By request, the stenographer repeated the question as follows:)

"Q. Were some people selling at lower prices than had been the usual market quotations?"

The Witness: Gradually the prices declined, and of course, everyone selling, sold at lower prices during the latter part of 1900, as I remember it, than they had previously. The market declined.

By Mr. Dickinson:

Q. State whether or not the National Steel Company, in the early part of 1900, so far as you know, was a party to any pool or agreement of any kind by which they maintained a uniform price.

Mr. Lindabury: If you know, instead of "so far as you know." Will you not change it to read that way, Judge?

Mr. Dickinson: Yes.

The Witness: I have no recollection of their having any arrangement with anyone as to prices.

By Mr. Dickinson:

Q. Have you any knowledge of any representatives of the National Steel Company, from the time of its formation down to the middle of 1900, attending any associations or meetings or committees representing competitors of that company, or where representatives of competitors of that company were present, where the question of prices was discussed?

A. No, sir.

Q. Did you yourself ever attend, from the time of the formation of the National Steel Company down to the middle of 1900, any committee or association or gathering where there were representatives of competitors of the National Steel Company, at which the question of prices was discussed?

A. No, sir; I do not recall any such meeting.

Q. Did you, from the middle of 1900 up to the time of the formation of the United States Steel Corporation, attend any such meetings as I have described?

A. I do not recall ever having attended any.

Q. Will you say that you did not?

A. I say that I do not recall ever having done it. I do not know that I should say any more.

MR. LINDABURY: You certainly ought not to, or anybody else.

By MR. DICKINSON:

Q. Mr. Wick, I will ask you whether or not during the first part of 1900, there was a general uniform price at which you and your competitors sold.

A. At a time of activity, or at any time, generally speaking, there is a uniformity of price.

Q. Did such uniformity of price prevail or not during the first half of the year 1900?

A. Practically a uniform price, I believe, prevailed; but it began to decline during 1900, and continued to decline.

Q. The latter part of 1900?

A. It began to decline, I say, some time during 1900, and continued to decline into, as I remember it, the latter part of 1900.

Q. State whether or not you or your competitors all at once declined, uniformly, or whether or not some one or the other first reduced that uniform price that had prevailed.

A. I am quite sure we did not all together.

Q. You did not all together?

A. Not to my knowledge, but as I have explained before, as we find a competitor, for any reason, desiring to get business and willing to reduce his price, when we come up

against those conditions, we have to do it, under the natural law of supply and demand.

Q. During that period of declination of prices just referred to, what was the attitude of the National Steel Company in respect of sale of billets to the general trade in interstate commerce, in competition with other manufacturers of billets?

A. I recall during that period we were very anxious for the business and sought it diligently, and acquired it, at the very best prices we could—but acquired it. We made it a special point to acquire it, because we had a large capacity and needed it.

Q. Were you or not tied up to special concerns, or did you sell it generally to the trade in interstate commerce?

A. We sold it to anyone who wanted it.

Q. Did you take an active part in the taking over of the National Steel Company by the United States Steel Corporation?

A. No, sir.

Q. Who were the active representatives of the National Steel Company and the National Steel Company interests in that transaction?

A. I do not know that I could testify. I have an idea. I imagine certain people did, and I cannot say anything further than that.

Q. Did you sell your stock?

A. I did.

Q. Did you sell it on mere rumor?

A. No, sir. I think the general set up, if it could be expressed in that way, was known to me, and I thought it was proper——

Q. (Interposing) Who made it known to you?

A. I do not recall, but I suppose it was done by those who were instrumental in doing it.

Q. Who were those instrumental in doing it?

A. As I say, I cannot give it to you positively. I think Judge Moore was interested in it.

Q. Who else?

A. And Mr. Reid.

Q. Who else?

A. Mr. Leeds. But I cannot testify positively, because I do not know.

Q. Did you have a large or small interest in the National Steel Company?

A. A very small interest, comparatively.

Q. Was it a substantial interest?

A. To me, yes, sir. In the aggregate, small.

Q. Did you or not sell on the general basis that the others sold on?

A. Yes, I think I did.

Q. From whom did you get your information direct as to what that basis was?

A. I do not know any others than the ones I have mentioned, and yet I do not recall of their definitely coming to me and explaining it.

Q. Did you talk to them about it before you sold?

A. I acquired the information somewhere, Judge, of course, and knew pretty well what I was doing. It was speculative, all of it, and there was no sure thing about it, just as there is no sure thing except death and taxes, you know.

Q. Was it a sure thing what you were going to get for your stock in that transaction?

A. No; there was not any sure thing about it.

Q. What do you mean by that?

A. That I was going to get so many dollars and cents for my stock.

Q. You mean the stock you put in or the stock you got?

A. The stock we got.

Q. But was it a sure thing as to what stock you were going to get for your stock in the National Steel Company? I mean to say, was it a sure thing before you made the transaction as to what stock in the United States Steel Corporation you were going to get for your stock in the National Steel Company?

A. I imagine it was known to me before I did it.

MR. LINDABURY: Do you think this is proper, Judge? Have you not the papers that will show this?

MR. DICKINSON: That will not show what I am trying to show.

MR. LINDABURY: He is your witness, you know, and this is not a cross examination.

MR. DICKINSON: I understand. Please read the last question and answer.

(The stenographer repeated the last question and answer as above recorded.)

THE WITNESS: Yes, I have no doubt I knew what I was going to get.

By MR. DICKINSON:

Q. Then, from whom did you get the information upon which you acted?

A. I do not recall any particular source. It was a matter of general discussion. I do not recall any particular source.

Q. Whom did you discuss it with?

A. I do not recall any particular person, but I expect quite likely I did discuss it with the other officers of the National Steel Company, and possibly with Judge Moore; I do not know, I do not recall any particular meeting or discussion of the question.

Q. I will ask you whether or not you ever talked with either Judge Moore or Mr. Reid, on that subject.

MR. LINDABURY: It seems to me that this is improper. That is certainly leading, and it is cross examination. I am therefore compelled to object to it. Further, it seems to be immaterial, and I object on that ground.

By MR. DICKINSON:

Q. I ask you whether you ever talked with either Judge Moore or Mr. Reid. You may answer the question.

A. I do not recall ever having talked with them. I may have done so.

Q. Do you recall anybody with whom you talked on that subject outside of those who, like you, had stock in the National Steel Company?

A. I do not recall having talked with anyone definitely—or vaguely.

Q. How much stock did you own in the National Steel Company?

A. I cannot answer that.

Q. Was it as much as ten shares?

A. Oh, yes.

Q. Was it as much as a hundred shares?

A. Yes, sir.

Q. Was it as much as 500 shares?

A. Yes.

Q. Was it as much as 1,000 shares?

A. Yes, sir.

MR. BOLLING: I must object to that line of inquiry. It is wholly irrelevant, it seems to me, in this case.

MR. LINDABURY: You have called these gentlemen as witnesses, and they are entitled to fair treatment. They are entitled to protection against an unreasonable prying into their affairs, it seems to me.

MR. DICKINSON: I have a perfect right to show what the holdings of every stockholder were, if I desire to do so.

MR. LINDABURY: I do not think that you feel that you ought to do that.

THE WITNESS: I have no desire to withhold any facts at all. I do not recall how much stock I had, but I expect I had as much or more than a thousand shares of the stock.

MR. DICKINSON: Well, that is all right, then. That is all, Mr. Wick.

CROSS EXAMINATION,

By MR. BOLLING:

Q. Do you remember whether J. P. Morgan & Company issued circulars to all the stockholders of the National Steel Company stating the terms on which their stock could be exchanged for stock of the United States Steel Corporation?

A. No, sir.

Q. You do not remember whether those circulars were issued or not?

A. No, sir.

Q. Do you not remember that the newspapers at that time published pretty generally the terms of the exchange offered to the stockholders?

A. No, sir. I do not remember how it was done, but I remember in a general way that we acquired a knowledge of what was done. How it was done I do not recall.

Q. Does your memory go so far as to warrant you in saying that the terms were generally known or pretty generally known to the public?

A. I imagine that that is no doubt true, that they were generally known, and certainly to those in interest, I would suppose.

Q. In the course of your direct examination you referred to a prevailing price for steel products. Has it not been your experience throughout your connection with the iron and steel industry that there has been practically at all times a prevailing price?

A. A prevailing price subject to fluctuations. Nothing is permanent at all.

Q. I mean a price pretty close to which everyone was selling.

A. Yes sir.

Q. How long did you say you had been in the iron and steel business?

A. I have been in the iron and steel business since 1876, until in the last ten years.

Q. From 1876 to 1899?

A. Yes, sir.

Q. That would be about twenty-three years. Am I correct in the assumption that it was difficult, sometimes, to ascertain what was the prevailing price, but that, as near as you could ascertain it, you kept as close to it as you could get?

A. Yes, sir; we did. Of course that has been my idea of doing those things, and I have done so so far as I could, to get all I could, but to be sure I was busy, if there was any margin in it.

Q. Naturally a study of the market conditions and demand

for different classes of steel products, would be likely to lead most of the intelligent steel makers to somewhat the same conclusions, would it not?

A. If they did not come to that conclusion any other way they came to it when they got out in the field and found what they could get for their product. But it is the same today as it always has been, so far as I know.

Q. And just as soon as they got out in the field and ascertained the actual conditions, they made the necessary adjustments?

A. Yes, I think they did.

Q. With that the case, does it not follow that violent fluctuations are due to want of information, usually?

A. Violent fluctuations are sometimes considered very savage and very foolish, but some of the very shrewdest competitors that I have ever been up against are those that have gone out in a slack market and cut prices, reduced prices very materially, the prevailing prices very materially, in order to get a large amount of business, that was good business at remunerative prices later on.

Q. To what competitors do you refer, Mr. Wick?

A. To all parties making goods similar to our own.

Q. I do not think you understand my question. When you spoke of competitors who have made these great cuts from the prevailing prices, did you refer to any one in particular?

A. Not of late years, but I had in mind one in particular.

Q. Who was that?

A. Mr. John L. Kennedy, of J. Painter & Sons, hoop manufacturers in this city years ago. In one day he acquired large contracts for hoop iron, at very greatly reduced prices, that seemed to be foolish at the time, but afterwards seemed very wise.

MR. DICKINSON: Will you please give the year while you are referring to it?

THE WITNESS: Oh, a long time ago.

MR. LINDABURY: About how long ago?

THE WITNESS: Thirty years, I suspect.

By Mr. Bolling:

Q. Do you remember what was the tonnage of rails the National Steel Company was making when the United States Steel Corporation purchased it?

A. No.

Q. Was it very small?

A. Yes; I think it was.

Q. Practically negligible from a competitive point of view?

A. Well, I am not very clear as to the exact time or the exact amount of rails made. I am very certain that there were not a great many rails made by the National Steel Company up to the time— I do not think their plant was perfected, and therefore their tonnage, I think, was comparatively light.

Q. Was not the National Steel Company occupied very largely with the furnishing of sheet and tin plate bars to the American Sheet Steel and the American Tin Plate Company?

A. Yes, sir.

Q. Do you remember whether the National Steel Company failed to fully supply the requirements of the American Sheet Steel and the American Tin Plate Companies?

A. I think there were times that they did not supply it fully.

Q. When it did not produce enough to fully supply the demands of those two companies?

A. Yes; I think there were times that they were not able to fully supply them, but I do not recall just to what extent.

Q. Then was not the sale by the National Steel Company of steel products to others than the Sheet Steel and Tin Plate Companies in the nature of the sale of an excess, in times when those companies did not require the full amount being produced?

A. I know there were times when it was very important that the country should be scoured for business.

Q. When the Sheet Steel Company and the Tin Plate Company did not need your production of semi-finished steel, then it became necessary for you to sell it outside; is that correct?

A. We sold it anywhere and everywhere, as I remember, that we could, wherever we could get the business.

Q. Naturally, when it became necessary for you to sell it outside you sold it anywhere you could?

A. Yes, sir.

Q. But when the Sheet Steel and the Tin Plate Companies were calling for more semi-finished steel than you could make, you would not have any to sell outside?

MR. DICKINSON: I object to that, because it has not been proven by this witness, and I do not think it has been proven at all, that they called for more than he could make.

MR. BOLLING: Oh, yes; he said that they could not supply them. You can ask him that, if you do not think he testified to that.

By MR. BOLLING:

Q. Did you say a moment ago that there were times when you could not supply the requirements of the American Sheet Steel and the American Tin Plate Companies?

A. Yes, sir; I think there were.

Q. At those times, if you could not supply the demands of those companies, which we have previously shown were connected through common stock ownership—that has been shown by a number of witnesses in the case, and there is no question about it—you would have little or no steel to sell outside?

A. We would not seek a trade that we were not in every-day touch with, naturally, as long as our regular, natural trade required the stuff. At any other time, we would.

Q. Was not the production of rods and bars by the Mingo Junction Plant very small indeed?

A. I think it was; yes, sir.

Q. And practically negligible, from a competitive standpoint?

A. Yes, I would think it was.

Q. Did not the situation of the Federal Steel Company prevent its being a serious competitor with you?

A. You are speaking now of the National Steel?

Q. Yes.

A. I do not think the Federal Steel Company were ever very strong competitors.

Q. You and the Federal Steel Company supplied different territory, did you not?

A. I cannot say as to them. I suppose they supplied the territory near to them, and naturally we supplied territory near to us.

Q. You merely know from your experience in handling the sales end of the business that you did not come in competition with them in your business?

A. I do not think we did very seriously; no, sir.

RE-DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Do you recall any particular time or times when the only customers of the National Steel Company were the American Sheet Steel, the American Tin Plate Company, and the American Steel Hoop Company?

A. No, sir; I do not.

Q. You say you supplied territory adjacent to you, and the Federal Company supplied territory adjacent to them?

A. That was the natural result, Judge.

Q. Are you speaking now of general impressions as to the natural result?

A. If I remember right, I said that I was not very familiar with the territory or with the trade of the Federal Steel Company.

Q. Do you know whether or not your company and the National Steel Company sold in the same territory outside of the State of Ohio that the Federal Steel Company sold in?

Mr. Lindabury: Objected to as having already been answered on previous direct examination.

The Witness: I do not recall competition with the Illinois or Federal Steel Company. It certainly could not have been very active, if there was any.

Q. You say it could not have been active?

A. I say I do not think it was very active.

Q. You do not think it was very active?

A. No, sir. Our zones were different.

Q. Is it on that that you base your answers?

A. Partly; yes, sir.

Q. Have you any positive recollection that you did not compete with them?

A. No, sir; I have not.

RE-CROSS EXAMINATION,

By Mr. Bolling:

Q. If you had, in your management of the business, come in active competition with them, you would have remembered it, naturally?

A. I think I should; yes, sir.

By Mr. Dickinson:

Q. Would you have remembered that any better than you have remembered in regard to the sale of your stock, when people talked to you about it?

Mr. Lindabury: I object to that, as cross examination of the witness, and as an imputation upon his memory.

Mr. Dickinson: It is not an imputation on his memory; it is just an explanation of his memory.

Mr. Lindabury: I object to that as an improper question. It is objected to further, because it is not competent for a man to discredit his own witness.

The Witness: I do not recall that I have been asked the question as to whether I sold my stock or not.

By Mr. Dickinson:

Q. I referred, in that question, to the questions that you were asked in regard to those to whom you talked in respect to the sale of your stock when it was taken over by the United States Steel Corporation; and the question was whether your memory was any sharper or better defined in regard to active competition with the Federal Steel Company than it was in regard to the matters about which you were questioned in

reference to the sale of your stock when the National was taken over by the United States Steel Corporation.

However, I will withdraw the question.

Do you recall selling in competition in interstate commerce with the Cambria Company?

A. I do not recall any instances.

Q. How about the Lackawanna?

A. I do not recall any instances.

Q. How about the Pennsylvania?

A. I do not recall any.

Q. How about the Bethlehem?

A. I do not recall any. The Lackawanna is the Buffalo concern. I do not think they were making any billets or any steel, up to the time the National Steel Company went over into the Corporation. I do not believe they were.

MR. DICKINSON: All right, that is all.

By MR. LINDABURY:

Q. Did you compete with the Carnegie Company?

A. Yes, sir.

HENRY CHALFANT,

a witness called by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Where do you live, Mr. Chalfant?

A. Pittsburgh.

Q. What is your age?

A. 45.

Q. What is your business?

A. Manufacturer of tubular goods.

Q. With what concern are you associated?

A. Spang, Chalfant & Company.

Q. How long have you been associated with that concern?

A. Since 1890.

Q. In what various capacities? Please just state the various employments in which you have been engaged by that company.

A. I said since 1890. The corporation was not formed then. It was 1898 or 1899 that we were made a corporation.

Q. Previous to that, there was a firm, was there?

A. Yes, sir.

Q. Were you associated with that firm?

A. I was associated with that firm from the fall of 1890.

Q. And after the formation of the corporation you have been with the corporation?

A. Yes.

MR. LINDABURY: Did he give the year of the formation of the corporation?

THE WITNESS: 1898 or 1899.

By MR. DICKINSON:

Q. In what capacities were you employed or did you serve while it was a partnership?

A. I was at the works in a sort of a clerical capacity for three or four years; then down at the city office as a clerk there; general clerical duties.

Q. Were you ever connected with the sales department?

A. Oh, yes.

Q. When did your connection with that department begin?

A. About 1895, I suppose.

Q. How long did your connection with the sales department continue?

A. Five or six years.

Q. From 1895 to along about 1900?

A. 1900 or 1901.

Q. Since then what positions have you held?

A. I have been treasurer, vice-president and president of the company.

Q. During the period that you were connected with the sales department, state whether or not it was your duty to know the trade to which you sold.

A. Yes.

Q. And whether or not that extended to knowledge of the competitors in that trade.

A. Yes, it did.

Q. In what business have Spang, Chalfant & Company been engaged? I do not know whether I asked you that or not.

A. In the manufacture of tubular goods: pipe and tubes.

Q. Pipe and boiler tubes?

A. Yes.

Q. Where did you sell those goods during the period from 1890 up to, say, 1901?

A. We sold them throughout the country.

Q. Do you mean by that this country—the United States?

A. Yes.

Q. State, Mr. Chalfant, what companies or manufacturers, whether companies or corporations, sold as competitors of your company in the same territory. Just name them, will you?

A. The Reading Iron Company, the National Tube Company, the Riverside Iron Works, A. M. Byers Company, and the American Tube Company.

Q. That is, the American Tube & Iron Company?

A. The American Tube & Iron Company perhaps. That is the one I refer to, at any rate.

Q. Did you mention the National Tube Company or not?

A. The National Tube.

Q. Did you mention them?

A. I think so. I intended to.

Q. I will ask you about the Allison Manufacturing Company.

A. Yes.

Q. How about the Chester Pipe & Tube Company?

A. Yes.

Q. How about the Cohoes Company?

A. Yes, they were one.

Q. How about the Delaware Iron Company?

A. I know them as Morris-Tasker & Company. I did not remember them as the Delaware Iron Company.

Q. How about the Oil Well Supply Company?

A. Yes.

Q. The Pennsylvania Tube Company?

A. Yes.

Q. The Riverside Iron Works?

A. I mentioned them.

Q. The Syracuse Tube Company?

A. Yes.

Q. The Western Tube Company?

A. Yes.

Q. Are there any others that you have not named and that I have not named, that you recall?

A. There was the Harrisburg Pipe & Pipe Bending Company, that started to make pipe about 1900, I think, if not before that time.

Q. What of the concerns named competed with Spang, Chalfant & Company in boiler tubes?

A. The National Tube Works; the Reading Iron Company; the Syracuse Tube Company; the American Tube & Iron Company; Allison and Morris-Tasker.

Q. That is the Delaware Iron Company?

A. Yes.

Q. I will ask you how about the Chester Pipe & Tube Company?

A. They did not make tubes.

Q. How about the Cohoes Tube Company?

A. I do not think they made boiler tubes.

Q. How about the Pennsylvania Tube Company?

A. No.

Q. The Riverside Iron Works?

A. No.

Q. The Western Tube Company?

A. No.

Q. Then those you have specified competed in boiler tubes?

A. In boiler tubes; yes, sir.

Q. The others competed in pipes?

A. In pipes, yes.

Q. Did all of them compete in pipes or not, of those that you have named?

A. Some of them only made tubes.

Q. Some of them only made boiler tubes?

A. Yes.

MR. LINDABURY: He did not say boiler tubes.

THE WITNESS: Boiler tubes.

MR. LINDABURY: Some of them only made boiler tubes?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Will you name those that only made boiler tubes?

A. The Syracuse Tube Company; Tyler—I do not know whether that is the Tyler Tube & Pipe Company; perhaps it is, but they only made boiler tubes, to my remembrance.

Q. Do you recall any others that made boiler tubes alone?

A. No.

Q. The National Tube Company; did they make both pipes and boiler tubes?

A. Yes.

Q. And competed with your company in both?

A. Yes.

Q. In territory generally throughout the United States?

A. Yes.

MR. LINDABURY: Do you mean to classify all tubes as pipes except boiler tubes?

MR. DICKINSON: Pipes and boiler tubes are the two general classifications.

THE WITNESS: That is the trade name. A tube, in the trade, means a boiler tube.

MR. LINDABURY: And all other tubes are classified as pipe? That is what you mean to do?

THE WITNESS: That is what I am doing, yes.

MR. LINDABURY: I only wanted to understand you; that is all.

By MR. DICKINSON:

Q. State whether or not, before the National Tube Company was formed, there were any negotiations between that company and Mr. Converse and Mr. Cromwell as to the pu-

chase by them or taking over by them of the National Tube Company of the works of Spang, Chalfant & Company.

A. Yes, there were negotiations of that kind conducted. One moment, I should correct that. I did not understand. You were asking about before the formation of the National Tube Company, whether there were any negotiations between our company and the National Tube Company?

Q. No, between your company and Mr. Converse and Mr. Cromwell, with a view of their taking over your company under the combination that they were then making.

A. Yes; there were.

Q. Did it or not result in the purchase of your company's properties?

A. It did not.

Q. How did these negotiations originate?

Mr. Lindabury: That is objected to as irrelevant and immaterial.

The Witness: They originated by Mr. Converse telling me about it, I think; outlining his plans.

By Mr. Dickinson:

Q. Mr. Chalfant, state whether or not there was an association called the Lap Weld Boiler Tube Association.

A. No, sir; there was not any such association. It was not called that. There was an association.

Q. What was it called?

A. It was not called anything in particular. It was an association of people interested in the manufacture of boiler tubes.

Q. When did it begin?

A. I can not be sure. It was 1896 or 1897.

Q. Who were the persons who came together in that assembly or meeting or whatever it was?

A. Mr. Converse, Colonel Tyler, some representative from the Reading Iron Company, somebody from Allison, somebody from Syracuse, and some representative from Spang, Chalfant & Company.

Q. What concern did Mr. Converse represent?

A. The National Tube Works Company.

Q. State whether or not, before the National Tube Company was organized, any of the concerns that subsequently went into the National Tube Company belonged to this assemblage.

A. Yes; some of them.

Q. What were they?

A. Syracuse; Morris Tasker; American Tube & Iron; Allison.

Q. How about the Pennsylvania?

A. The Pennsylvania was not in that tube association; not then, at any rate.

Q. Did this association or assemblage have a secretary?

A. Yes.

Q. Who was the secretary?

A. Mr. Timmons.

Q. What is his first name?

A. George.

Q. Where is he from?

A. Syracuse.

Q. Did or did not those who participated in these meetings have any allotments of percentage of product?

A. I think not at the organization; not at first.

Q. How was it afterwards?

A. Afterwards they did, yes.

Q. Did the National Tube Company have any allotment?

A. Yes.

Q. What was the allotment to the National Tube Company?

A. I don't know that I can tell you.

Q. Have you an idea as to about what it was?

A. Oh, yes; it was about—no, not before the National Tube Company was formed.

MR. SEVERANCE: You used the term the National Tube Company. You meant the Tube Works Company, did you not?

MR. DICKINSON: No; I meant the National Tube Company.

THE WITNESS: The National Tube Company, that would

be about 50 per cent., I would say. It may have been more or less.

By Mr. Dickinson:

Q. What did this association—no, I will not call it an association, because I do not want to call it anything objectionable—but what did this aggregation of companies and individuals do?

A. They met and discussed trade conditions; and we had parties and golf matches, and we would have a dinner when we met.

Q. What were the duties of the secretary?

A. The secretary collected contributions from the different associates, and paid the bills.

Q. Were any reports made to the secretary?

A. Yes.

Q. Did the secretary make any reports to the members?

A. Yes.

Q. What did these reports show?

A. They showed the amount of business.

Q. The business that was done?

A. The business that was done in boiler tubes.

Q. The business of the various members?

A. Yes.

Q. Did it show their percentages?

A. Yes.

Q. What occurred, if anything, if any member or any one of these in these gatherings exceeded the percentages that had been allotted?

Mr. Lindabury: Objected to. He has not said that any percentage was allotted.

Mr. Dickinson: Oh, yes, he has so testified.

Mr. Lindabury: I think not.

By Mr. Dickinson:

Q. You said that there were percentages, did you not?

A. I do not remember telling you so, but there were, as a matter of fact. You asked me if the secretary showed the percentages of the business that had been done.

MR. DICKINSON: I will ask the stenographer to read what he said about the allotment.

(The stenographer read as follows:)

"Q. What was the allotment to the National Tube Company?

"A. I do not know that I can tell you.

"Q. Have you any idea as to about what it was?

"A. Oh, yes; it was about—no, not before the National Tube Company was formed.

"MR. SEVERANCE: You used the term the National Tube Company. You meant the Tube Works Company, did you not?

"MR. DICKINSON: No; I meant the National Tube Company.

"THE WITNESS: The National Tube Company, that would be about 50 per cent, I would say. It may have been more or less."

By MR. DICKINSON:

Q. Did the other members have percentages allotted to them?

A. Yes.

Q. Did these reports sent out by the secretary to the various members show the sales made by the various members?

A. Yes.

Q. If any member exceeded the percentage allotted to that member, what was done, if anything?

A. He made a payment.

Q. What was the payment, and what was the basis?

A. I cannot say. It was a small payment, made when he exceeded his allotment.

Q. You cannot recall what it was?

A. No, sir.

Q. How long did these meetings continue?

A. They continued until the spring of 1906.

Q. How long did Mr. Converse continue to attend those meetings?

A. He was there off and on until almost the last.

Q. Did he attend any meetings in 1906?

A. Yes; I think he did.
Q. What Mr. Converse was that?
A. Mr. E. C. Converse.
Q. How often were meetings held?
A. Usually once a month.
Q. Did you have any written agreement?
A. No, sir.

CROSS EXAMINATION,

By Mr. Reed:

Q. You say the payments were small, Mr. Chalfant. It is a fact, is it not, that they were only sufficient for the dinners and expenses of the meetings, usually?

A. No; they were a little more than that; but it was a small amount.

Q. It was not a sufficient percentage to deter any member from taking an order?

A. No, sir.

Q. And it was not intended to keep the members down to their allotments, was it? It was not——

Mr. Dickinson: Let him answer your question before you ask another one.

Mr. Reed: I am going to ask him two questions in one.

By Mr. Reed:

Q. Was it not intended simply as a source of raising the money necessary to pay for those meetings?

A. No; not altogether that. It was a small payment, if any one exceeded his allotment in any one month.

Q. You do not remember how much per ton it was?

A. No, I do not. My idea is that if anyone sold, say, in money, $2,000 a month, then he was required to pay in five or ten per cent of that $2,000, or something of that sort. That is the way it was fixed up, as I recall it.

Q. You spoke of a Mr. Converse being there in the year 1906. Is it not a fact that at that time he had ceased to be active in the affairs of the National Tube Company, and was there simply as an old friend?

A. He was there more in that capacity than in any other, yes.

Q. At those last meetings he did not represent any particular company, but was there simply for the social enjoyment of the meeting?

A. He was there more for the social enjoyment of the meeting, although he wanted to keep that connection, and we wanted him to do so, with the National Tube Company.

Q. In naming competitors of your company at the time that the National Tube Company was formed, did you name the Monongahela Tube Company?

A. No, I did not.

Q. That was one of them, was it not?

A. That was one of them. They do not make tubes, though.

Q. They make pipes?

A. Yes.

Q. The Conshohocken Pipe Works made some pipe, too?

A. Yes.

Q. The Tyler Pipe & Tube Company made tubes, mostly?

A. Made boiler tubes, yes.

Q. What did Worth Brothers make?

A. They made locomotive boiler tubes.

Q. Was the Crane Company making tubes at that time?

A. They made pipe.

Q. The South Chester Company was started afterwards, I believe, after the formation of the National Tube Company?

A. Yes, sir.

Q. This association that you speak of, that Mr. Timmons was secretary of, was in boiler tubes, was it not?

A. Yes.

Q. And they had no control over the prices of pipes?

A. They had nothing to do with the pipe business.

Q. What percentage of the tube industry of the United States did boiler tubes consist of in tonnage?

A. In tonnage, very small; I should say under ten per cent.

Q. Mr. Chalfant, when your corporation was formed, in 1898, what was its capital?

A. $900,000.

Q. How much of that had been issued; had all of it been issued?

A. All of it.

Q. What was its capital in 1901, when the Steel Corporation was formed? Say, April, 1901; what was its capital then?

A. $900,000.

Q. What was its capacity in 1898, in tons?

A. About 60,000 tons.

Q. 60,000 tons per annum?

A. In 1898, yes; I should say so.

Q. In 1901 about how many tons was its yearly capacity?

A. In 1901 its capacity was about 69,000 or 70,000 tons.

Q. Was that its yearly capacity?

A. Per year, yes.

Q. At the present time what is the capital of your company?

A. $1,800,000.

Q. Has your Company any bonded debt?

A. No.

Q. What is its annual capacity in tons?

MR. DICKINSON: I will except to the last two questions as irrelevant and incompetent.

By MR. REED:

Q. Answer the question.

A. About 200,000.

MR. REED: That is all.

(Witness excused.)

(Thereupon, at 12:25 o'clock p. m., a recess was taken until 1:45 o'clock p. m.)

AFTER RECESS,

At the expiration of the recess the hearing was resumed.

SAMUEL A. BENNER,

a witness called by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Where do you live, Mr. Benner.

A. Pittsburgh.

Q. What is your age?

A. Forty-one.

Q. In what business are you now engaged?

A. I am not engaged in any business at present.

Q. When were you last engaged in business?

A. Up to the first of this month.

Q. In what kind of business were you engaged?

A. I was assistant to the president of the Pittsburgh Steel Company.

Q. Were you ever connected with the various Carnegie Companies, including the partnership and the corporation? If so, please state when that connection began, and the various capacities. Just answer that all in one answer, please.

A. I was employed as clerk early in September, 1888, by Carnegie, Phipps & Company, Limited, and was in their employ until they were absorbed into the Carnegie Steel Company, Limited, in 1892. I continued in the employ of that company until September 1, 1902, and I came back to them September 1, 1904, and remained in their employ until January 1, 1911.

Q. Please state the various duties you performed; the capacities in which you served.

A. I think it was in the year 1889 they organized a sales department in Carnegie, Phipps & Company, Limited, and I

was a clerk in that department. As the business grew, the department grew. I was appointed manager of sales for the Republic of Mexico in the latter part of 1898, and I retained that position for several years. I think it was in 1900 or 1901, probably about a year's time, I was special representative traveling in Europe and South America.

Q. What office were you attached to in Europe?

A. The headquarters of the Carnegie Steel Company in London.

Q. Were you attached to that office?

A. No, I was attached to the Pittsburgh office.

Q. What kind of duties were you performing in traveling in Europe?

A. I started on my way to South America, and went via Europe. When I was over there, the amount of the business was so great that they asked me to stay for four or five or six months to help them out.

Q. Help them out in what?

A. In handling the business of the London office.

Q. In sales?

A. Yes.

Q. What did you have to do, if anything, with the sales department in 1895, 1896 and 1897, until you went away in 1898?

A. I think it was from 1892 until 1898 I was chief clerk in the sales department in Pittsburgh.

Q. What was the course of business of the Carnegie Company throughout the time you were with them, in regard to getting business, in competition?

A. At what time do you mean?

Q. Prior to the organization of the United States Steel Corporation.

A. They were very successful.

Q. State whether it was an aggressive or a non-aggressive company.

A. It was very aggressive.

Q. Which was the largest company in the steel business

in the United States prior to the formation of the United States Steel Corporation?

A. The Carnegie Steel Company.

Q. Which was the largest competitor of the Carnegie Company at the time of the formation of the United States Steel Corporation?

A. I think the Federal Steel Company was, inasmuch as it owned the Lorain Steel Company and the Illinois Steel Company. Yes, it must have been.

Q. Answer this same question in respect to interstate commerce. What do you answer to that?

A. I think probably the next would be Jones & Laughlin.

Q. No, not the next one. Just answer the same question, in respect to interstate commerce.

A. My answer will apply to interstate commerce.

Q. Which was the next largest competitor in interstate commerce of the Carnegie Company prior to the formation of the United States Steel Corporation?

A. I presume the Cambria Steel Company and Jones & Laughlin would be the next.

Q. Name the other largest competitors?

A. The Lackawanna Steel Company, the Pennsylvania Steel Company, the Maryland Steel Company, the National Steel Company, and the Tennessee Coal, Iron & Railroad Company.

Q. Which was the largest competitor in rails of the Carnegie Company at the time the United States Steel Corporation was formed?

A. The Illinois Steel Company.

Q. In the year 1900 which was the largest competitor of the Carnegie Company in foreign trade? I mean, of the American companies in sheet and tin plate bars.

A. The National Steel Company.

Q. I believe you stated that at that time you were in London engaged in the sale of the products of the Carnegie Company?

A. Yes, sir.

Q. And that you were traveling generally in Europe making those sales; is that correct or not?

A. I was not absolutely charged with the work, but I was familiar with it.

Q. When did the Carnegie Company first acquire any considerable control of ore properties?

MR. LINDABURY: Of course this is of your own knowledge.

THE WITNESS: It is all hearsay on my part. Somewhere around—

By MR. DICKINSON:

Q. You need not give hearsay.

A. Somewhere around about—

MR. LINDABURY: Counsel withdraws the question, and of course, you understand that Judge Dickinson only means to ask you for knowledge, not hearsay.

By MR. DICKINSON:

Q. Before the formation of the United States Steel Corporation, state who was the most conspicuous, dominating personality in the steel business in the United States.

A. Mr. Carnegie.

Q. How long had he been so?

A. For many years.

Q. What was the policy pursued by the Carnegie Company as to the character of its plants and the equipments?

A. They were supposed to be the best in the country.

Q. Mr. Benner, during the time that you were in this country and connected with the various Carnegie organizations that you have described, state where that company sold, in the United States, billets, sheet and tin plate bars, rails and the other products which it made.

MR. LINDABURY: I object to that. It does not appear that this witness had to do with the selling end of the business.

MR. DICKINSON: Oh, yes; he was in charge of the sales department.

MR. LINDABURY: In this country?

MR. DICKINSON: Yes.

MR. COLTON: He said he was chief clerk of the Carnegie Company.

THE WITNESS: You mean, before or after the formation of the United States Steel Corporation?

By MR. DICKINSON:

Q. Before the formation of the United States Steel Corporation.

MR. LINDABURY: If he knows, of course.

THE WITNESS: They sold numerous concerns billets and sheet bars.

By MR. DICKINSON:

Q. In what territory did they sell in the United States?

A. Billets and sheet bars were mostly used in and around Pittsburgh; and Ohio, and Indiana, and Illinois.

Q. How about rails?

A. They sold rails all over the United States.

Q. How about structural material?

A. All over the United States.

Q. If at any time any sharp competition or fight in rails occurred between the Carnegie Company and any other company, please state what it was and how it was characterized, whether it extended to any other products, and how long it lasted, and how it affected other concerns.

A. There was very sharp competition around about 1896 or 1897 between the Illinois Steel Company and the Carnegie Steel Company, especially in rails, and I think the price of rails went the lowest it ever has in the history of the country during that time.

Q. How low did it go?

A. My recollection is that it went as low as $14, Pittsburgh.

Q. Please state whether or not the contest, begun in respect to rails, extended to other products.

A. My recollection is that it began with rails and extended to all other products.

Q. Did it involve any other of their competitors?

A. Certainly.

Q. How long did this contest continue and how long before there was any readjustment, if any readjustment of prices took place?

A. I should say it lasted from six months to a year.

Q. Did you ever hold any such position as first assistant to Mr. Bope?

A. When I was general manager of sales he was my immediate superior.

Q. Did you at any time, either in company with Mr. Bope or by yourself, represent the Carnegie Steel Company, after the formation of the United States Steel Corporation, at the meetings of any committee?

A. Yes, sir.

Q. What committees did you attend, and who composed them, so far as you recollect, and what concerns did these representatives represent?

A. I have no recollection of attending any meetings prior to the winter of 1907 and 1908. I may have attended some, but I do not recollect it.

Q. State what ones you attended after November, 1907.

A. After the winter of 1907-1908 I attended some meetings, either alone or in company with Colonel Bope or Mr. Dinkey. Those meetings were in connection, as I recollect—

Q. Wait a minute. Do you mean after the winter of 1908?

A. Yes, during the winter or after the winter.

Q. The winter of 1908.

MR. LINDABURY: You once said "1907-1908."

MR. DICKINSON: That is what I am trying to get at, what winter it was.

THE WITNESS: Make it the panic of 1907. That is what I mean.

By MR. DICKINSON:

Q. (Continuing). How long? We will put it that way.

A. For something like a year and a half.

Q. That is, you began after the panic of 1907 and continued about a year and a half from that time?

A. Yes.

Q. What committees?

A. Those committees were in connection with light rails, billets, sheet bars, bar mill products, and I think also in connection with plates. I am not quite sure.

Q. How were those committees divided—rails and billets?

A. Rails and billets go together, yes.

Q. State what manufacturers were represented, and as far as you can who represented them on this committee on rails and billets.

A. Carnegie Steel Company; Illinois Steel Company; Republic Iron & Steel Company; Lackawanna Steel Company; Cambria Steel Company; and Jones & Laughlin Steel Company.

Q. Who represented these various companies, from time to time, beginning with the Carnegie Company?

A. So far as the Carnegie Steel Company was concerned, it would be Mr. Dinkey or Colonel Bope, or maybe the three of us, or maybe the two of us.

Q. How about the Illinois Steel?

A. It was usually represented by Mr. George Baker.

Q. How about the Cambria?

A. Mr. Fred Krebs.

Q. How about the Lackawanna?

A. The Lackawanna was represented at that time by H. Sanborn Smith.

Q. How about the Pennsylvania?

A. Mr. H. F. Martin.

Q. How about the Republic?

A. Mr. Tracy Guthrie, I think.

Q. Now, take the committee on bars. What manufacturers did they represent?

A. The Carnegie, Illinois, Republic, the Lackawanna, the Cambria, and Jones & Laughlin.

Q. Who represented those several companies on that committee?

A. The same men, with Mr. Geddes for Jones & Laughlin, and sometimes Mr. King.

Q. Did you attend any meetings of the committee on plates?

A. I do not recollect any.

Q. How often did these meetings take place?

A. I suppose they were two to three months apart.

Q. Was there any fixed time for them?

A. No fixed time.

Q. Now, Mr. Benner, please state what was said and done at those meetings by the various representatives of these manufacturing concerns that were there.

A. Well, the first would be a general talk over conditions, and usually a statement on the part of the Carnegie and Illinois Steel Companies' representatives as to what their attitude would be as to prices, and with the hope extended that the other competitors would do likewise.

Q. What did the others do?

A. They usually did as we did for a time.

Q. I mean in the meetings, what did they do?

MR. LINDABURY: What did they say, you mean, do you not, Judge?

MR. DICKINSON: Yes.

THE WITNESS: I have no recollection whether they said—they never said absolutely that they would do anything.

By MR. DICKINSON:

Q. They did not enter into any agreement to do anything?

A. No, sir.

Q. You had no written agreement?

A. No, sir.

Q. You had no penalties?

A. No, sir.

MR. LINDABURY: He said they had no agreement.

MR. DICKINSON: Then they had no written agreement.

MR. LINDABURY: And no penalties.

By MR. DICKINSON:

Q. What announcements, after the Carnegie and Illinois Steel Companies made their announcements as to their prices, that they expected to maintain, would be made by the others?

MR. LINDABURY: I object. It does not appear that any announcements were made.

By MR. DICKINSON:

Q. Were any announcements made by the others?

A. You mean at these meetings?

Q. At those meetings, yes.

MR. LINDABURY: I object. That has been answered. The witness says that they said nothing.

MR. DICKINSON: Now, Mr. Lindabury, I think I have a right to examine the witness without your anticipating his answers and answering for him.

MR. LINDABURY: I beg your pardon. I do not think you have a right to ask a question several times.

MR. DICKINSON: Everything you say I will have to have put down in the record, because I regard that as an interference with the examination. Of course any exceptions or objections are proper, but conversation aloud, conversation of that kind, I do not think is proper.

MR. LINDABURY: That was not a conversation aloud. It was an objection that I intended to have go on the record.

MR. DICKINSON: I do not care what you say, so long as it goes on the record.

MR. LINDABURY: I object to counsel cross examining his own witness or attempting by the change of a word to change the effect of an answer.

By MR. DICKINSON:

Q. State whether or not, after statements were made by the Carnegie Company and the Federal Company as to prices, whether statements were made by the representatives of any other manufacturers at those meetings as to prices?

A. Well, in general they might have said that they expected to do the same.

Q. Was any announcement made, or not, that they would maintain a different price?

A. I have no recollection of that.

Q. Did you make any of those announcements at meetings where you were present representing the Carnegie Company?

A. Well, I would take my share in the conversation, yes.

Q. You took your share of the conversations. When you made these announcements as to your prices, did you or not expect the others to rely upon your selling at that price?

MR. LINDABURY: Objected to as irrelevant and immaterial.

By Mr. Dickinson:

Q. Please answer the question.

A. What was the question?

(The question was repeated by the stenographer as above recorded.)

A. Yes, sir.

By Mr. Dickinson:

Q. State whether or not when announcements were made by others, representing your competitors, you relied upon their selling at that price.

A. Within limits, yes.

Q. Within what limits?

A. That they would approximate it.

Q. In what way?

A. Well, they did not live up as closely to the schedule of prices as either the Carnegie or the Illinois Steel Company did.

Q. But you did rely upon the statements that they made that they would approximately do it?

A. Yes, sir.

Q. Were any announcements made subsequent to these meetings, in that trade, as to prices?

A. There may have been from time to time.

Q. What is your recollection?

A. My recollection is that there were.

Q. State whether or not these announcements were in accord with the prices that had been announced by the Carnegie Steel Company and the Federal Steel Company at these meetings.

A. Yes, sir.

Q. State whether or not generally the Carnegie Company sold at those prices; and if it changed at any time, what would bring about such change.

A. They usually sold at those prices, until too many of their competitors cut them, when it would be necessary to meet the competition.

Q. Would there or not be any meetings following such action or preceding it?

A. Yes; it was very likely, when a change like that happened, that there would be a further meeting.

Q. What would take place at those meetings which came in consequence of a cutting or change in price?

A. A readjustment of the schedule of prices of the Carnegie and Illinois Steel Companies.

Q. Would any question or not be raised in respect of any one cutting prices, at any of these meetings?

A. Yes; there would usually be a discussion on that.

Q. Just state what would be the character of that discussion; what would be said and what would be done.

A. The cuts were pointed out and discussed.

Q. Would the name of the person who made the cut be brought up?

A. Yes; very often

Q. What character of discussion would follow that in respect to such action on the part of the one cutting?

A. I do not understand.

Q. What would be the procedure, where you had a meeting which came about on account of a cutting in price?

A. The procedure would be to discuss the cut.

Q. Would anything be said or not about the man or to the man who had made the cut?

A. Yes.

Q. Of what character?

A. Sometimes recrimination; sometimes feeling would be expressed.

Q. Recrimination about what?

A. About the cut.

Q. About the cut?

A. About the cut. It was unnecessary, probably, in the judgment of somebody else.

Q. What would be said from time to time in defense or in explanation of these cuts?

A. Usually the other man would claim that somebody else had done it.

Q. You mean——

A. (Interposing) Some other competitor.

Q. Some competitor who had been attending these meetings, or some outside competitor?

A. It might be either or both.

Q. What would you do, if anything, as to the question of prices, before you left that meeting?

A. The Carnegie and Illinois Steel Company's representatives would usually say that they would maintain such and such a price.

Q. What would the others say?

A. In general, they would say that they thought the prices were about right, and they expected to do the same.

Q. Mr. Benner, state what was the effect of these meetings, from time to time, in regard to the maintenance of prices.

MR. LINDABURY: We object to that as calling for the witness's opinion.

MR. DICKINSON: I think he is giving a pretty good one.

MR. LINDABURY: It may be good; but it is not evidential.

By MR. DICKINSON:

Q. Answer the question.

A. It tended to maintain prices stable.

Q. Did any question ever arise at any of these meetings in the nature of a complaint on account of a customer being taken away by some other of those who had participated in these meetings?

A. Yes.

Q. What would that lead to, if anything?

A. That often led to a cut.

Q. I mean, though, in the meetings would these questions arise?

A. You could not do anything. The customer had gone.

Q. What do you mean by "lead to a cut, often"?

A. For instance, if one maker would have a customer to whom he had been supplying goods for several years, and some other competitor would slip in and take that buyer away from him, the presumption was that it was only possible to do that by means of a cut in price. Consequently the buyer

who had lost that customer would cut prices to somebody else's customer.

Q. That would be out in the trade, would it?

A. Yes; speedily.

Q. What would that lead to, if anything?

A. It usually led to a general reduction in the market. While the open schedule of published prices would remain the same, yet the actual sales would be made at a lower rate. When that situation got serious, another meeting would take place.

Q. What would be the result of that meeting?

A. The result of that meeting was that the Carnegie and Illinois Steel Companies would change their price to suit the real market conditions.

Q. Would announcements be made in respect to that, as had been done previously?

A. Yes; they would usually be made.

Q. By all parties?

A. By somebody. It would appear in the trade papers.

Q. The announcement of prices would appear in the trade papers?

A. Yes.

Q. What proportion of those in the iron and steel business producing products of like character were represented in these meetings? That is, what proportion of the whole?

A. I presume 75 to 90 per cent.

Q. What was the condition of the steel business in the latter part of 1907 in respect to stocks on hand?

A. The stocks of iron and steel products in the hands of jobbers, manufacturers and consumers at the time of the panic of 1907 were very, very heavy.

Q. Did any immediate and large reduction occur just after the panic of 1907?

A. No, sir.

Q. What was done in respect to prices and the stocks on hand?

A. The Carnegie and Illinois Steel Companies did their best to hold the prices up, to enable the possessors of these stocks to dispose of them.

Q. When was any material change made in prices?

A. I don't think it was until the summer of 1908.

Q. What was the amount then, about?

A. Two or three dollars a ton. The amount of the cut was two or three dollars a ton.

Q. How long did those prices continue?

A. I could not say, offhand. My recollection is, though, for thirty to sixty days.

Q. What followed that cut in prices?

A. Generally speaking, the market was well maintained until February, 1909. In my recollection there was a heavy cut then.

Q. In 1909?

A. Yes; followed with a very drastic cut in April.

Q. How long did that continue?

A. You mean, after April, 1909?

Q. Yes.

A. About two or three months. Then the market started up again.

Q. Do you remember about what time that cut in 1909 began?

A. February.

Q. Do you remember the date?

A. No.

Q. Well, that is not important. You have referred to a large stock on hand in 1907, after the panic began. How long was it before those stocks were practically disposed of?

A. Six to eight months.

Q. After those stocks were disposed of, what was the attitude of the trade in respect to prices as compared with what it was when those stocks were on hand? I mean, the purchasers?

A. They wanted lower prices.

Q. When did they begin to ask lower prices?

MR. LINDABURY: To ask for lower prices, you mean?

THE WITNESS: I think in the summer of 1908.

By Mr. Dickinson:

Q. When were lower prices made, if at all?

A. In the summer of 1908.

Q. What was the amount of that reduction?

A. Two or three dollars a ton.

Q. Was that a substantial reduction or a small reduction?

A. It was a substantial reduction.

Q. State whether or not that brought in business.

A. Not very much.

Q. Why didn't it?

A. The country did not need the steel.

Q. When was there a revival of business, if at all?

A. Not until the early spring of 1909.

Q. Was there a reduction then or not?

A. Yes, sir.

Q. How heavy was that reduction?

A. It was a very heavy reduction.

Q. How did that affect business?

A. I think the railroads saw there were bargains, and started to buy.

Q. Did it stimulate business or not?

A. It stimulated business.

Q. Generally?

A. Yes.

Q. Can you state from memory approximately the schedule of prices that was in effect on or about June 10, 1908 for the various products?

Mr. Lindabury: I object to that. He has not said any schedule of prices was in effect, except—

Mr. Dickinson: Very well; take out the word "schedule" and put in "prices."

Mr. Lindabury: He has not said that any schedule of prices was in effect except by the Carnegie and Illinois Steel Companies.

The Witness: I think the billets and sheet bars were $25 to $26; plate, shapes and bars about $1.50 to $1.60.

By MR. DICKINSON:

Q. What about structural iron?

A. That is plate, shapes and bars. That is shapes and structural.

Q. Do you know what reduction, if any, was made in merchant pipe?

A. No.

Q. How about wire nails?

A. No, sir.

Q. Do you know whether or not there was an announcement to the trade of prices?

A. Yes, sir.

Q. I show you an article here in the Iron Trade Review, June 11, 1908, and ask you whether or not you can say that that announcement was made.

I will first show the article to counsel.

MR. LINDABURY: This witness was not present at that meeting, I suppose?

MR. DICKINSON: No; I am not asking about the meeting. I am asking if this announcement was made.

MR. LINDABURY: How could he know?

MR. DICKINSON: I am asking whether he knows. He has just said the announcement was made.

MR. LINDABURY: He has seen that publication, I suppose.

MR. DICKINSON: I don't know whether he has or not.

MR. LINDABURY: I do not see upon what legal theory you are showing that. That is refreshing his recollection about something that he has had no previous connection with.

MR. COLTON: He can state whether there was an announcement or not.

MR. LINDABURY: You cannot, properly——

MR. DICKINSON: Let us see whether we can or not.

MR. LINDABURY: I say that you cannot properly do it.

THE WITNESS: (After inspecting the publication referred to) I have no reason to doubt that that was made.

By MR. DICKINSON:

Q. Have you any recollection about it?

A. Yes; I have a recollection of it.

By Mr. Lindabury:

Q. You have a recollection of seeing it in the paper?

A. I have a recollection of the announcement being made by Judge Gary.

Q. In your hearing?

A. No. By public press. I saw it in the public press.

Q. That is what I mean, yes.

By Mr. Dickinson:

Q. Look at the prices that are announced there, and state whether or not those are the prices that were followed after the date given in that paper.

Mr. Lindabury: I object to that as an improper method of refreshing the recollection of the witness.

The Witness: (After inspecting the publication referred to) I think they were.

CROSS EXAMINATION.

By Mr. Lindabury:

Q. I understand you are not connected in any way with the steel business at this time?

A. No.

Q. And you have no connection any longer with the Carnegie Company or the Steel Corporation?

A. No, sir.

Q. When was it that you were abroad?

A. In the latter part of 1898 I went to Mexico.

Q. How long were you there?

A. I think until the middle of 1900.

Q. Then you went abroad, did you?

A. I was in Europe in the middle of 1900; in the middle or latter part.

Q. How long were you there?

A. I was there for some months.

Q. It is only a matter of months?

A. Yes, sir.

Q. And you were in South America a while?

A. Then I went to South America, and came back to the United States in the latter part of the year 1901.

Q. While you were in Europe you say that the National Steel Company sold billets over there?

A. Yes; billets and sheet bars.

Q. In considerable amount?

A. My recollection is yes.

Q. Could you be positive about that?

A. I think so.

Q. Do you not think you could be mistaken, as to quantity, I mean?

A. No, I think they sold heavily.

Q. Did it pass through your hands in any way?

A. No. They were competitors.

Q. How were you able to gauge the amount they sold?

A. By the reports of the steel trade in London.

Q. You have not looked up the records, have you?

A. No, sir. It is purely recollection.

Q. So they established quite a considerable trade there, you think, in bars and billets?

A. Yes, sir.

Q. Were you selling bars and billets for the Carnegie Company there?

A. No. The office was.

Q. Just what was your duty there? I did not quite catch it.

A. I was on my way to South America, and the business of the office was quite heavy, and so Colonel Hunnsiker asked me to stay there for a few months to help him.

Q. He was the representative of the Carnegie Company, and what was the Carnegie Company selling there?

A. They were selling rails.

Q. What products?

A. Rails and ship plates, and shapes, bars, billets, and sheet bars.

Q. Did they have considerable foreign trade?

A. Yes.

Q. In Europe?

A. Yes.

Q. Did they also have foreign trade in South America?

A. Yes.

Q. Did the Federal Company have any foreign trade in Europe at that time?

A. I think they did, in rails.

Q. What kind of rails?

A. Standard rails.

Q. Are you sure about that?

A. Pretty sure; reasonably sure.

Q. Did you ever meet any of their competition over there?

A. Not that I recollect.

Q. Was it not girder rails only that they sold there?

A. It may have been, yes; it may have been girder rails.

Q. That is, for street cars?

A. Yes.

Q. In South America did the Carnegie Company have trade?

A. Yes, especially with the Argentine.

Q. In what products?

A. Bars, rails, plates and shapes.

Q. Did the National have any trade there?

A. Not that I recollect.

Q. Did the Federal have any trade there?

A. Not that I recollect.

Q. In this country what were the products of the Carnegie Company at that time? I mean their leading products?

A. Rails, blooms, billets, slabs, sheet bars, structural shapes, bars, axles and armor plate.

Q. Did they sell any of those in the Eastern States?

A. Yes, sir.

Q. They sold a good many, I take it, along the Atlantic Seaboard, did they not?

A. Yes, sir.

Q. Did the Federal Company compete with them in that territory in the sale of any of those prducts?

A. I don't think they did so very much in the east.

Q. Practically no trade in the east—they had practically no trade in the east, did they? What competition did the Carnegie Company have in the east with respect to those products?

A. Competition with the Lackawanna Steel Company, with the Cambria Steel Company, with the Pennsylvania Steel Company, with the National Steel Company and Jones & Laughlin Steel Company.

Q. Those were all located in the Pittsburgh District?

A. And east.

Q. And east of there. I suppose the location of the Federal Steel Company was against their competition for the eastern trade. Their location was also against competition for the foreign trade, was it not?

A. Yes, sir.

Q. Prohibitive, was it not?

A. Not altogether. It depends on the condition of the market.

Q. But generally?

A. Yes, sir.

Q. Generally they were out of it?

A. They were not in it with the Carnegie.

Q. Because of their location; and they were not able to get any of the business anywhere east of Pittsburgh?

A. No, not if Carnegie wanted it.

Q. I mean practically.

A. Yes.

Q. Where was it that the Federal competed with the Carnegie, and as to which of these various products that you say the Carnegie made did the Federal Company compete?

A. You mean where?

Q. Both. What were they and——

A. (Interrupting) They competed on rails.

Q. That you told us about; but take the other things, what other of these products?

A. Plates and structural shapes and bars in what is known as the central part of the United States.

Q. That is the territory between Pittsburgh and Chicago?

A. Yes. And south and west of Chicago, and north and west of Chicago.

Q. I suppose that in the territory north and west of Chi-

cago the Federal Company had an advantage over the Carnegie Company?

A. Yes, sir.

Q. The Federal Company was not able to come, or did not come, very far east of the western line of Ohio?

A. No; they very seldom came further than, say, the Ohio-Indiana line.

Q. Now, then, in respect to this situation growing out of the panic, the first of those committee meetings that you attended seems to have been very generally represented by the manufacturers of the different lines of steel products?

A. Yes.

Q. The first of those meetings I believe occurred after the panic of 1907?

A. Yes.

Q. How soon after?

A. Within a comparatively short time.

Q. The situation was a very serious one, was it not?

A. Oh, very.

Q. What were the elements that created that seriousness; why was it so serious?

A. On account of the money panic.

Q. And was the country prepared for it—the jobbers and the dealers?

A. No, sir.

Q. They were taken greatly by surprise, were they not?

A. They were.

Q. They were loaded up, were they not, to a most unusual extent with steel products?

A. Yes; they were. We were very much worried about their credits.

Q. What would a severe or sharp drop in prices mean to them?

A. Ruin to a number of them.

Q. And to the steel manufacturers it would have meant a loss?

A. It would have meant a loss.

Q. Of course, I judge that was owing to the fact that money was owing to them from the dealers?

A. Yes.

Q. Was it the middle men only that were loaded up?

A. No, the manufacturers too, as well as the consumers.

Q. All the way down the line to next door to the consumer?

A. Yes.

Q. What manufacturers did you allude to?

A. Any manufacturer who bought steel and manufactured it for resale.

Q. You did not mean the original steel manufacturers, as we call them?

A. No.

Q. But the manufacturer who used the finished product and made machinery?

A. Yes; the secondary manufacturer.

Q. Yes, secondary production. A good many of those in the country, of course?

A. Bound to be.

Q. I take it from what you say that their attitude at that time was not that of asking a reduction in prices?

A. No, sir; it was not. They wanted us to maintain prices.

Q. They were rather clamorous on the subject, were they not?

A. Yes.

Q. Was that a subject of discussion at your meetings?

A. Yes.

Q. And of anxious consideration?

A. Yes, sir.

Q. And was a general canvass of the situation fully and freely gone into?

A. Yes, sir.

Q. I think you have said that not at that first meeting or at any other, did you make any agreement to maintain any particular price for any time at all?

A. No, sir.

Q. But that before the end of the discussion the Carnegie and Illinois, one or both of them, did announce the price that they were going to exact?

A. Yes, sir.

Q. There was no time fixed, I take it, during which these prices were to prevail?

A. No, sir.

Q. Nor any undertaking not to change it whenever they chose?

A. No, sir.

Q. No promise of that kind was ever made?

A. No, sir.

Q. No declaration as to the length of time they would thus continue it?

A. No, sir.

Q. I understand you that generally the other manufacturers present remained silent, although sometimes they declared their purpose?

A. No, they all participated in the discussions.

Q. But after the Carnegie and Illinois Companies had made a statement as to the price they were going to charge, I understood you to say, perhaps wrongly—

A. (Interrupting). The other makers would say that that was a wise decision and they expected to do the same.

Q. What I understood you to say was that some of them would do that, but a majority of them would remain silent. Is that correct?

A. Yes; I guess you can say that.

Q. That is what I understood you to say. The general effect of this was to steady the prices?

A. Yes, sir. That was the object of the meetings.

Q. I suppose at these meetings there was a discussion intended to ascertain whether the general condition was such as to make an advance or a lessening of price or maintenance of the present price reasonable or not?

A. Yes, sir.

Q. Those meetings continued down for a year or two?

A. Yes; about a year and a half.

Q. I understood you that this stock of the jobbers and dealers and secondary manufacturers was pretty well used up within six or eight months?

A. Yes, sir.

Q. And then they began to seek a reduction in prices?

A. Yes, sir.

Q. And they got it?

A. Yes, sir.

Q. And that was brought about in the way you have told us?

A. Yes, sir.

Q. At no one of these meetings, I understood you, was there any agreement made as to either the raising or lowering or maintenance of prices?

A. No, sir.

Q. But there was a full and frank discussion of the business situation?

A. Yes, sir.

Q. As it had changed from time to time?

A. Yes, sir.

Q. Were there any failures of jobbers during these times? I mean the panicky time and the year following.

A. No; there was no failure of any importance in the iron and steel business—largely due to the action taken.

Q. You have been through panics before, have you not?

A Yes.

Q. Was there ever a panic as severe as this that was not attended with a great number of failures?

A. Not to my knowledge.

Q. This was the first one that you got through?

A. Yes.

Q. You think it was due very largely to this action?

A. I am very sure it was.

RE-DIRECT EXAMINATION,

By Mr. Dickinson:

Q. You stated that the manufacturers, succeeding the time of the panic of 1907, wanted you to maintain prices?

A. Yes, sir.

Q. Were prices maintained?

A. They were.

Q. How?

A. By the Carnegie and Illinois Steel Companies refus-

ing to sell below a certain level. They were the two large makers. In other words, they set the pace.

Q. Did they or not control the situation?

A. They could not have controlled the situation without the help of their competitors, and their competitors helped them.

Q. You were asked about whether you had any agreement and you said no. What did you mean by agreement, in the sense that you answered that question?

A. I meant a formal undertaking, either written or expressed by word.

Q. What do you mean by a formal undertaking?

A. I mean by a formal undertaking an expression in a formal way.

Q. In what way? I would like you to explain that.

A. Either in writing or by word of mouth.

Q. What kind of an expression in a formal way? Do you mean something of the nature of a contract?

A. I presume you mean by passing a promise?

Q. No, I am not saying what I mean, but I am trying to get at what you mean.

A. What I mean is this: That there was no absolute promise made by anybody.

Q. That is what you meant when you said that there was no agreement?

A. Yes.

Q. I will ask you whether or not you left with the general understanding, each relying upon the other, that the prices announced would be maintained.

A. Yes, sir. Yes, sir.

Q. And what would interrupt the maintenance of that price, according to that understanding that you left with?

A. Usually one competitor would take some business away from another competitor.

Q. As I understand you that would be the occasion of another meeting?

A. Yes, sir.

Q. State whether or not there were any meetings held subsequent to February, 1909.

A. I do not think there were any meetings, or at least I have no recollection of any, until in the summer or fall of 1910.

Q. What is the first one in 1910 that you have any recollection of?

A. If I recollect, a meeting was held in the offices of the Jones & Laughlin Steel Company.

Q. Office of the Jones & Laughlin Steel Company?

A. Yes, in Pittsburgh.

Q. Who was present there?

A. Mr. Guthrie, of the Republic Iron & Steel Company; Mr. Geddes and Mr. Gerry, of Jones & Laughlin; Mr. Robinson, of the Lackawanna Steel Company, and I think Mr. Martin, of the Pennsylvania Steel Company.

Q. Was there anybody there from the Illinois Steel Company?

A. I cannot recollect.

Q. Were you there?

A. I was there.

Q. What company were you representing there?

A. The Carnegie Steel Company.

Q. What took place at that meeting?

A. We were then in the middle of another depression in the business, apparently, and we talked matters over, and nothing much was done.

Q. Had there been a cut in prices preceding that meeting?

A. Yes, sir.

Q. Were there any meetings following that meeting?

A. I do not recollect any.

Q. State whether the meeting you have referred to was followed by any announcement of prices in the public press.

A. I do not think it was.

Q. Was there any announcement of prices at the meeting?

A. No. The meeting was not very successful.

Q. What do you mean by not being very successful?

A. The conditions were so mixed that the best thing to do was to let matters take their course.

By Mr. Lindabury:

Q. You could not even discuss it?

A. No, sir.

By Mr. Dickinson:

Q. Did you discuss the conditions at that meeting?

A. To a certain extent, yes.

Q. Did you exchange information as to the condition of business?

A. Yes, sir.

Q. And as to what you were doing respectively?

A. Yes, sir.

Q. And nothing resulted?

A. Nothing resulted.

Q. That did not bring about any result?

A. I do not think it did, as I recollect it.

By Mr. Lindabury:

Q. I will read from the bill in this case.

"It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amounts to an agreement or combination in restraint of trade."

I will mark that so you can read it, and hand it to you (handing witness the paper referred to).

My question—and you may pause to consider it if you choose—is whether or not, at any of these meetings you attended, beginning in the autumn of 1907, anything more was done than is there stated.

A. No, sir.

By Mr. Dickinson:

Q. You said that you assembled?

A. Yes, sir.

Q. You exchanged information?

A. Yes, sir.

Q. And you declared purposes as to prices?

A. Yes, sir.

Q. I understood you to say also, that you left, each relying upon the other that that price would be observed by them.

and that the announcement of that price was made to the trade?

A. Yes, sir.

MR. DICKINSON: That is all.

By MR. LINDABURY:

Q. That was faith and hope, though, rather than promise and contract, was it not?

A. Yes.

By MR. DICKINSON:

Q. Was a good deal of it faith?

A. Mostly hope.

Q. Did you expect to observe your announcement?

A. Yes.

Q. Did you observe it?

A. Yes, sir.

Q. Did others observe it?

A. The larger concerns, the stronger concerns, yes.

Q. And had they observed what they had so announced at previous meetings?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. Now, I will ask you whether or not the stronger concerns that were represented there can practically make the market in the steel business.

A. You mean the Carnegie and Illinois Companies?

Q. Including, of course, the Illinois and the Carnegie; the Lackawanna, Jones & Laughlin, the Cambria and Pennsylvania Companies.

A. Only when conditions are with them.

Q. What do you mean by conditions being with them?

A. When times are good.

Q. When times are good?

A. Yes.

Q. They can do it then, can they?

A. Yes.

By Mr. Lindabury:

Q. Can any concern, however large, maintain a price above that at which its competitors are selling?

A. No, sir.

By Mr. Dickinson:

Q. I will ask if the Steel Corporation did not, over periods, maintain prices above those that some of its competitors were selling at?

A. Only for very short periods.

Q. But they did do it for short periods?

A. And during that time they surrendered the business.

Mr. Dickinson: That is all.

BERTRAM S. STEPHENSON,

a witness called by and on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Dickinson:

Q. Mr. Stephenson, where do you live?

A. I live in Pittsburgh.

Q. What is your age?

A. 32.

Q. In what business are you engaged?

A. Pig iron.

Q. With what company?

A. With M. A. Hanna & Company.

Q. Where is that company located?

A. At Cleveland.

Q. Have you any connection with the Iron Trade Review?

A. Not at present.

Q. Have you ever had any connection with the Iron Trade Review?

A. Yes.

Q. During what period? What years?

A. For about five years previous to February, 1910.

Q. That would be, then, from about February, 1905, on?

A. Yes; from September, 1905.

Q. State what your connection was with that journal.

A. I was associate editor, and for most of the time was stationed in New York, in charge of the New York editorial office.

Q. What was your business as representative of that journal in New York?

A. To secure and put in shape for publication all news matter of the trade in New York and Philadelphia.

MR. DICKINSON: There are some articles that I want to identify by the witness, and introduce in evidence. I will show them to counsel first. (The books referred to were exhibited to counsel.)

By MR. DICKINSON:

Q. Mr. Stephenson, please examine the Iron Trade Review here shown you, December 26, 1907, page 1028, the article entitled "Making Progress," and state whether or not you can identify that article and whether you had any connection with the writing of it, and if so, what.

A. I would not be able to identify that absolutely as my writing.

Q. Have you any recollection of it?

A. I have a recollection of handling a vast mass of matter in connection with this entire so-called Gary movement. It is four or five years ago, and as to any particular story, with one or two exceptions, I am rather hazy as to the exact manner in which it was prepared. As a general thing, though, I wrote the stories.

Q. Where does that article purport to be written from?

A. It bears no heading. It naturally would come from New York.

MR. SEVERANCE: The paper is published in Cleveland, is it not?

THE WITNESS: Yes.

MR. DICKINSON: You were located in New York?

MR. SEVERANCE: That article is not headed New York?

THE WITNESS: It bears no heading.

By MR. DICKINSON:

Q. That purports to come from New York?

MR. LINDABURY: No.

MR. DICKINSON: Well, now, Mr. Lindabury, I wish you would let the witness answer.

MR. LINDABURY: That is a matter that anybody can tell as well as he can. You should not ask that. You are asking for the contents of a written paper.

MR. DICKINSON: When I ask the witness a question, I do not think it is proper for counsel to answer it.

MR. SEVERANCE: It is not a proper question.

MR. DICKINSON: That may be. If that is so, the proper way is to except to it.

MR. SEVERANCE: All right. We object to the question.

MR. DICKINSON: Very well. Enter the objection.

MR. LINDABURY: We have nobody here to rule. We have a right to appeal to your honor. You know just as well as I do that you have no right to ask that question.

MR. DICKINSON: I do not. I think I have a right to introduce that article, and I am going to introduce a number of articles. Very likely you will object to them. I think I have a right to put them in, as a part of the current history of the times, by a journal whose business it was to record the history of that particular trade. I am fully aware of the fact that they will be objected to, but that is a matter for the Court to decide.

MR. SEVERANCE: But you have not before you this particular article. If you had, you would not have asked the particular question. Look at the article and I am sure you will withdraw the question.

By MR. DICKINSON:

Q. State whether or not, at or about that time, you obtained from Judge Gary, or from his office, any announcements in substantial accord with what is in this article attributed to Judge Gary.

MR. LINDABURY: I object to the question as irrelevant, because it asks for what may have come from Judge Gary's office.

By MR. DICKINSON:

Q. Answer the question.

(At the request of the witness the stenographer repeated the question.)

A. That means that I must remember specifically having obtained such information, if I answer in the affirmative?

Q. I am asking about your memory.

A. I do not remember it absolutely.

Q. Did you go to Judge Gary's office about that time?

A. Yes, sir; frequently.

Q. Did you go to him on a date preceding that article, or a date shortly preceding that?

A. I would be unable to say that I went to his office immediately before the publication of this.

If you will permit me to make an explanation of the way in which that matter is secured and handled—

Q. I am perfectly willing for you to do it. I only want to get at what you know.

A. It may simplify things—

MR. LINDABURY: I object to that. All this is under objection, and we had better be confined to questions to which we can object.

By MR. DICKINSON:

Q. If you know anything of your own knowledge about that article and the information in it and how it was obtained, state what you know.

MR. LINDABURY: Objected to as incompetent, irrelevant and not the way to prove it.

By MR. DICKINSON:

Q. Answer the question.

A. I have a hazy recollection of having a sheet of paper, a flimsy sheet of paper, carrying this list of names; either this list or a larger list—a complete large list, a little later.

Whether I got that from Judge Gary's office or from one who was more or less identified with this movement and present at the dinners, or whether I got it by comparing the statements in the daily papers, I am unable to say absolutely.

Q. Do you recognize any of the names that appear in those committees as the names which you obtained at or about that time?

A. The names are all familiar to me.

Q. Are they familiar to you as being members of those committees according to the information that you obtained about that time?

A. I assumed that they were members of these committees.

Q. You say you assumed it?

A. Yes.

Q. Did you act on assumption, not information, when you sent articles to the Iron Trade Review?

A. We followed the course that would produce results with the least effort. That means following the course which I outlined to you a moment ago. I might have gotten this in any one of three ways.

Q. What do you mean by "results"? Do you mean by which you would get authentic information, or by which you would simply write an article with the least effort?

A. I mean that I was in New York to report the iron and steel news for the Iron Trade Review; but I was down there——

Q. Down where?

A. At New York, to secure news that was accurate; that it did not matter at all to the editor of the Iron Trade Review or the president of the company how I got it, so long as it was accurate, and no confidences were violated.

Q. You mean by "secure results," then, to secure accurate information?

A. Yes.

Q. And not merely to get up an article?

A. No, sir.

Q. Did you, so far as you could, secure accurate information?

A. Yes, sir.

Q. Did you send any communications giving information that you did not at the time believe to be accurate?

A. No, sir.

Q. Did you, from time to time, go to the office of Judge Gary to get information in regard to what had been done in the iron trade?

A. I was at Judge Gary's office about as frequently as I was at the offices of the other large steel interests.

Q. How frequently would that be?

A. At least once a week.

Q. How often would you write these articles, or give this information?

A. Whenever there was any occasion for it.

Q. That is, whenever there was anything of sufficient import?

A. And I knew it.

Q. And you knew it to communicate it?

A. Yes, sir.

Q. State whether or not, at that time, you received information from Judge Gary's office as to who were members of the several committees named in the article before you.

A. I am unable to do that, absolutely.

Q. Did you go to his office preceding the time of the announcement of these committees by the Iron Trade Review?

A. Yes. I was calling there regularly.

Q. Did you send any information to the Iron Trade Review at or about that time, as to who constituted the personnel of those committees?

A. I tell you that I have a hazy recollection——

Q. I am not asking you about that article now, but I am asking you about that time whether you sent to the Trade Review a statement as to the personnel of those commitees which are designated there.

A. I am telling you that at that time I have a hazy recollection of having in my possession a list of these names, and that I used that either in the preparation of this article or one following in a couple of weeks.

Q. What article is that?

A. February 13, 1908. There is a supplementary list there.

Q. Turn to page 348 and read the title of the article.

A. Page 348, what date?

Q. February 13, 1908.

A. You are asking me about this supplementary list (indicating). There is one just previous to this (indicating), which is the other one. This is the larger list (indicating). This is the revised list here (indicating).

MR. COLTON: This is the revised list. Look over this. See the heading of that article (indicating).

By MR. DICKINSON:

Q. Read the title of that article.

A. Revised list of New York Conference Committeemen.

Q. State whether or not you wrote that article.

A. I am unable to state absolutely.

Q. What is your recollection of it?

A. My recollection is that simultaneously with the announcement of these committees, or at the time these committees were formed, that material was printed in the New York papers.

MR. LINDABURY: In the daily papers, you mean?

THE WITNESS: In the daily papers. It was in general circulation in a news way, and I may have gotten it from them and written it. Ordinarily I would have been held accountable for both these articles.

By MR. DICKINSON:

Q. How is that?

A. Ordinarily I would have been held accountable for securing both of these articles.

Q. Those two articles that appear there?

A. Occasionally, however, Mr. Penton, the managing editor and president of the company that publishes this journal, was in New York, and he had a pernicious habit of scaring up considerable news that I did not get, and it may have been furnished by him.

Q. I understood you to say, however, that you did recollect

getting names that were the same as those that appear in one of those articles?

A. Yes. I said I had a list.

Q. Where did you get that?

A. I cannot tell you. I have a hazy recollection, again, that one of these was handed me by Mr. Penton.

Q. Who is Mr. Penton?

A. President of the Penton Publishing Company, publishing the Iron Trade Review in Cleveland.

Q. What are his initials?

A. The name is John A. Penton.

Q. Have you any recollection of going to the office of the United States Steel Corporation and having this list checked up?

A. Occasionally I would do that. Judge Gary's secretary, Mr. Fleming, who is now dead, was a good personal friend of mine, and frequently when I was rushed I would telephone over to him, something like this: "Fleming, you saw the Judge's statement in the morning paper. Is that correct?" I would tell him which paper. Judge Gary was always careful about being correctly quoted, and checked up any interviews rather carefully, and on Mr. Fleming's say-so I assumed that my information was correct, when I would get it from the morning papers.

Q. State whether or not you got the names appearing in those several committees checked up by Mr. Fleming.

A. I would be unable to testify absolutely that I did.

Q. I am not asking you to say absolutely. I am asking you to testify according to the best of your knowledge, information and belief.

A. Judge Dickinson, if I do not remember that I did—

Q. I am not asking you to remember, or urging you to remember it; I am urging you to answer the question according to your best knowledge, information and belief.

Mr. Lindabury: That would not be proper, and we object to his answering the question.

Mr. Dickinson: I am not asking him to recollect the par-

ticular thing, I am not urging him to remember any particular thing.

(The last few questions and answers were read aloud by the stenographer, as above recorded.)

By Mr. Dickinson:

Q. I am not suggesting to you to remember any particular thing, nor anything about it one way or the other; but I am asking you to answer the questions I ask you to the best of your knowledge, information and belief.

Mr. Lindabury: I object to that, because he is asked to tell, in the first place, if he has any knowledge about it, and if he has not any knowledge, to tell if he has any information, and if he has neither knowledge nor information, then, he is asked to testify according to his belief. There is no rule of evidence that admits any such testimony.

Mr. Dickinson: (Addressing the Examiner). I will ask what oath was administered to this witness?

The Examiner: That he should testify to the truth, the whole truth, and nothing but the truth.

Mr. Lindabury: Yes, and I believe he was not sworn to testify what he believed.

By Mr. Dickinson:

Q. Testify, so far as you can, to the best of your recollection, whether or not you got that list checked up by Mr. Gary's office.

Mr. Lindabury: I object, because the witness has already said that he has no recollection.

A. Which list do you refer to?

By Mr. Dickinson:

Q. Either of them.

A. I cannot say that I did have it checked up. I may have, but I cannot say that I did absolutely.

Q. Have you any recollection about it one way or the other?

A. No. You will have to remember that this was five years

ago and I was handling pages of material every week and almost every day, and I cannot remember those things.

MR. LINDABURY: There was a committee appointed, and we can find out whether the names are correct or not.

MR. SEVERANCE: You have had men on the stand who have testified that they were members of certain committees.

MR. DICKINSON: And you have objected all along. We had a printed list of these, and you objected to that.

MR. SEVERANCE: We cannot consent that this gentleman shall give his views on the situation and have them go in as evidence.

MR. LINDABURY: Of course I do not know whether this is accurate or not, but we can give you an accurate list, if that is what you want.

MR. BOLLING: We can undertake to furnish them with a correct list.

MR. LINDABURY: Mr. Halstead, will you make a memorandum to have that list compared, or get a correct list?

MR. HALSTEAD: Yes, sir.

By MR. DICKINSON:

Q. Look at this article on page 284 of the Iron Trade Review, of February 6, 1908, entitled "Meeting of Manufacturers," and state whether or not you wrote that article.

A. (After examination). Yes, sir; I wrote that.

Q. Where were you when you wrote it?

A. At New York.

Q. Where did you acquire the information from which you wrote it?

A. Part of the information came from Mr. Penton, who was at this dinner.

Q. And is that the same Mr. Penton you alluded to a while ago?

A. Yes; the same one.

Q. What is his name?

A. John A. Penton. To the best of my recollection the part of it which is marked "A brief statement given out by Judge Gary" is taken from the morning papers. The list of names I got somewhere, and I don't remember where—around

the corporation, I presume, because they usually had charge of the seating at the dinners, so that the harmonious manufacturers would be together.

MR. DICKINSON: We offer that article in evidence.

MR. LINDABURY: Objected to as irrelevant and incompetent and because it has not been shown that it is anything for which the Steel Corporation or any other defendant is in any way responsible.

MR. SEVERANCE: And the witness has stated that it is purely hearsay.

MR. DICKINSON: That will be followed by taking the deposition of Mr. Penton.

This article begins on page 284 of the Iron Trade Review of February 6, 1908, Volume XLII, and ends on page 286, with the words "President American Bridge Company, Pittsburgh."

(The article so identified was offered in evidence and marked "Government's Exhibit No. 156, October 29, 1912," and a copy thereof will be found in the book of exhibits.)

MR. DICKINSON: It is agreed by counsel that the original may be returned to the owner after a copy has been made for the record.

By MR. DICKINSON:

Q. Mr. Stephenson, I show you an article of the Iron Trade Review, June 11, 1908, at page 1067, entitled "New Schedule," the same being found in Volume XLII of the Journal referred to. It begins with the words "New schedule," and ends with the words "which it is desirous to avoid."

State whether or not you wrote that article.

A. Let me refresh my memory.

MR. SEVERANCE: How is the witness to refresh his memory—by reading something else? I object to that.

A. I telegraphed that to Cleveland from New York.

MR. DICKINSON: We offer this in evidence.

(The article so identified was offered in evidence and marked "Government Exhibit No. 157, October 29, 1912," and a copy thereof will be found in the book of exhibits.)

MR. SEVERANCE: Objected to as irrelevant and immaterial, and because no foundation has been laid for the testimony.

MR. DICKINSON: I suppose the same agreement is made about the original being returned?

MR. LINDABURY: Yes.

MR. SEVERANCE: We object on the ground that it is not in any way shown to emanate from the Steel Corporation, and has not been brought home to it or any of the other defendants.

By MR. DICKINSON:

Q. Where did you get the information upon which you based that?

A. I got it from the morning papers, according to my best recollection. In explanation of that, the statement says that it was given out at the close of a meeting in the evening. I lived at Summit, twenty-one miles out, and was very rarely in town in the evening. Therefore matters of that sort I generally got from the morning papers, and if there was any doubt about anything I generally telephoned to Mr. Fleming.

Q. Mr. Fleming, of Mr. Gary's office?

A. Yes, sir; Mr. Gary's secretary.

Q. Was it a part of your business there to quote the prices of the trade?

A. On certain commodities, yes.

Q. On commodities like billets?

A. The commodities on which I quoted prices are covered in the regular Philadelphia and New York markets, and you can tell from them which. Billets were not regularly quoted.

Q. How about sheet bars?

A. Those were usually quoted from Pittsburgh only.

Q. How about plates?

A. Plates were quoted from Philadelphia and also from New York.

Q. How about structural iron?

A. We quoted it from Philadelphia and New York.

Q. Do these show the quotations at Pittsburgh?

A. I think so. They are all marked, "Pittsburgh base."

MR. SEVERANCE: I would add to the objection that it now positively appears by the statement of the witness that the article did not emanate from any defendant, that it is purely hearsay and taken from some newspaper publication.

By MR. DICKINSON:

Q. I will ask you whether or not that was an announcement of the trade prices on those articles.

MR. SEVERANCE: I object to that. The article shows for itself what it was.

THE WITNESS: It was so understood.

By MR. DICKINSON:

Q. Was it the custom of this Trade Review to announce prices?

A. Yes, sir.

Q. Were the announcements that appeared in this Trade Review generally accepted as authentic by the trade?

A. As much so, I think, as any quotations that are available.

Q. What was the character of this Trade Review in the trade, for authenticity and reliability; good or bad?

A. It had a very good reputation.

MR. LINDABURY: I never heard anybody try to prove a man's reputation by the man himself, before.

MR. DICKINSON: He is not connected with the journal now.

By MR. DICKINSON:

Q. I will call your attention to page 1068, June 11, 1908, an announcement entitled "New Prices," just inside the line.

A. In the box there?

Q. Yes. You identify that as appearing in the Iron Trade Review?

A. Yes.

MR. DICKINSON: We offer that in evidence.

MR. SEVERANCE: I object, as irrelevant and immaterial. It shows on its face that it does not come from any one of the defendants; that it is a mere statement of alleged facts by the editor of a paper. I further object that he has no right to characterize any supposed action of any of these defendants, either as attempted in that article or otherwise.

(The article referred to was thereupon marked Government Exhibit No. 158, October 29, 1912, and a copy thereof will be found in the volume of Exhibits.)

MR. DICKINSON: It is understood that all of these books may be returned?

MR. SEVERANCE: Yes.

MR. DICKINSON: You may cross examine, gentlemen.

MR. SEVERANCE: No questions.

(The witness was thereupon excused.)

(Whereupon, an adjournment was taken until to-morrow, October 30, 1912, at 10:30 o'clock a. m.)

THIRTY-FIRST DAY.

Room 309, Federal Building,
Pittsburgh, Pennsylvania,

October 30, 1912.

The hearing was resumed at 10:30 o'clock a. m., before Special Examiner Henry P. Brown.

Present on behalf of the United States, Mr. Dickinson, Mr. Colton and Mr. Corneau.

Present on behalf of the defendants, Mr. Lindabury, Mr. Severance, Mr. Bolling and Mr. Reed.

D. T. McCABE,

was called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Where do you live, Mr. McCabe?

A. Pittsburgh.

Q. What is your age?

A. I am over 50.

Q. And under 60?

A. In that neighborhood.

Q. In what business are you engaged?

A. I am the Fourth Vice-President of the Pennsylvania Company.

MR. LINDABURY: Of the Pennsylvania Railroad Company?

THE WITNESS: No, sir; of the Pennsylvania Company.

By MR. DICKINSON:

Q. How long have you held that position?

A. Since January, 1907.

Q. In what department of work are you specially engaged?

A. The traffic department.

Q. You spoke of the Pennsylvania Company. What is the difference between that and the Pennsylvania Railroad Company?

A. The Pennsylvania Railroad Company is the Pennsylvania Railroad Company.

Q. Is that an operating company?

A. Yes; that is an operating company.

Q. Is the Pennsylvania Company an operating company?

A. The Pennsylvania Company is a holding company and an operating company also.

Q. In your traffic relations, have you anything to do with the Pennsylvania Railroad Company?

A. Only in the way of conferences, as I have with other roads.

Q. Where does the Pennsylvania Company operate?

A. West of Pittsburgh and Erie.

Q. And the Pennsylvania Railroad Company?

A. East of Pittsburgh and Erie.

Q. I believe you speak of your Lines West of Pittsburgh and Lines East?

A. The Pennsylvania Lines West of Pittsburgh is the way we designate our system.

Q. State whether or not there is any such association known as the Central Freight Association.

A. There is; yes, sir.

Q. Is there an association known as the Trunk Line Association?

A. I believe so. Our lines are not members of it.

Q. They are not members of that?

A. No, sir.

Q. How about the Central Freight Association?

A. We are members of the Central Freight Association.

Q. What territory does the Central Freight Association cover?

A. West of the trunk lines; and there is a line drawn—I cannot describe it except in a general way—it is west of Pitts-

burgh and Erie, west of Bellaire, south of a line drawn through the Lakes somewhere, over to the Illinois River, down to the Mississippi River, to the Ohio, back up to the point of beginning, say in the neighborhood of Bellaire. That is not quite correct, but it is in a general way.

Q. How often does the Central Freight Association meet?

A. I think bi-monthly.

Q. Do you or not represent the Pennsylvania Company at those meetings?

A. I do not; no, sir.

Q. Who does?

A. Our freight traffic manager.

Q. What is his name?

A. William Hodgdon.

Q. Is he in Pittsburgh?

A. Yes, sir. Also our general freight agents.

Q. More than one?

A. Yes.

Q. Give names and initials, please.

A. Mr. John J. Koch, of the Pennsylvania Company; M. S. Connelly, general freight agent of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway.

Q. State whether or not that association has anything to do with the question of rates on ore and coke coming into Pittsburgh and into the territory known as the Pittsburgh territory, and the Valley territory of Ohio.

A. I do not think they deal with the question at all.

Q. Is there any association that you know of that does deal with the question in any way of rates on ore and coke within that territory?

A. No, sir; there is none.

Q. Do you know of no association or no gatherings of representatives of any of the railroads within that territory that consider in any way at meetings the question of rates on ore from the Lake ports to Pittsburgh and the Ohio Valley, and coke into Pittsburgh and to the Ohio Valley?

A. It necessarily follows that there are gatherings of that kind, when the occasion for it arises.

Q. Is there any designation attached to those gather-

ings, whether you call it an association or otherwise? Are there any names characterizing such associations?

A. No, sir. If you will permit me, I may say this, as I do not want to be otherwise than frank about it: There is an association known as the Western Pennsylvania and Eastern Ohio Railway Traffic Association. It is a great big name, but the association does not amount to much. I happen to have fallen into the chairmanship of that association, when I was made a vice-president, merely because they wanted some one who would arrange for meetings when meetings were required; and I have at times, when meetings were necessary, sent out an invitation to all of the roads in the Pittsburgh district, the Ohio district, the West Virginia district, for a conference to discuss matters which might properly come before them. That association, however, was simply for the purpose of enabling the parties to get together, having some one who would ask for conferences when it was desired.

Q. When did that association last meet?

A. The association has not met, as an association, that I can recall, in many years.

Q. How many times did you preside over meetings of that association?

A. Over meetings of the association itself, I do not believe I ever presided.

Q. How many times did you preside or act as chairman over any meetings of representatives of any railroads, where the question of the rates on ore and coke was taken up and discussed?

A. I think I may have presided—I do not recall—but several times.

Q. When did you last preside over such a meeting?

A. I really cannot recall. My recollection is that when the ore rates were readjusted, the meeting was not a meeting formally called, but just an informal gathering at which the matter was talked over.

Q. When was that?

A. That, I think, was in 1909.

Q. Where did that take place?

A. My recollection is that it was at Cleveland.

Q. Who were present?

A. That I cannot recall.

Q. Were you there?

A. I was there; yes, sir.

Q. Can you recall the names of any persons who were present?

A. I think the representatives of the Baltimore & Ohio, the Erie, the New York Central Lines, and myself. They happened to be all. That is to the best of my recollection. I do not recall distinctly.

Q. How did that meeting get together, at whose instance, at whose notification?

A. That I do not recall.

Q. Did you preside over that meeting?

A. No, sir.

Q. Who did?

A. I do not think anybody did.

Q. Do you know who suggested the meeting, how they happened to get together?

A. I do not recall who it was that suggested it. The desirability of readjusting the ore rates had been talked about, but I do not recall who suggested the meeting.

Q. You did not happen to get together, did you?

A. Oh, no, sir.

Q. You met by consent, did you?

A. We met by common consent.

Q. And appointment?

A. And appointment.

Q. And you do not recall—

A. (Interrupting) I do not recall whether I, at the request of some of the others, sent that out, or whether somebody else sent it out; but there was a request for a meeting.

Q. Was there, at that meeting, any consideration of an application of the Youngstown furnaces for a reduction in ore rates?

A. No, sir.

Q. Were you in any meeting at any time, at any place, where a consideration was had of an application of the Youngstown furnaces for a reduction of ore rates.

A. There was such a meeting in New York, but I cannot recall the date. It was within the last eighteen months, I believe.

Q. How did that meeting come about?

A. It came about through a communication from Mr. Campbell, I think.

Q. What Mr. Campbell?

A. James A. Campbell, president of the Youngstown Sheet & Tube Company.

MR. LINDABURY: Were you present?

MR. DICKINSON: I will ask him that.

By MR. DICKINSON:

Q. Were you present at that meeting?

A. I was present; yes, sir.

Q. Who was there besides yourself?

A. I think the representatives of all the lines interested in the carriage of ore, coke and coal in the Valleys.

Q. State by name what companies were represented in that meeting.

A. To the best of my recollection, the companies represented at that meeting were the Baltimore & Ohio, the Erie, the New York Central, the Pennsylvania Company. My recollection is that those were all the lines.

Q. Who represented at that meeting the Baltimore & Ohio?

A. I believe it was Mr. Randolph.

Q. Give his initials, please.

A. George F. Randolph. I am trusting to my recollection. If I had known that I should be examined along these lines I would have been in a better position to state more definitely.

Q. Who represented the Erie?

A. It was Mr. Cooke, general traffic manager, or Mr. Brownell, their vice-president, or both. I do not remember specifically.

Q. Who represented the New York Central?

A. I believe Mr. Daly.

Q. And then there were the Pennsylvania Companies, did you say, or the Pennsylvania Company?

A. The Pennsylvania Company.

Q. You represented that?

A. I did.

Q. Can you name any other persons who were present during that meeting?

A. I said that I represented the Pennsylvania Company. Joseph Wood was representing the Pennsylvania Company, and he was the party who had been addressed by Mr. Campbell.

Q. And you were there also?

A. I was there also.

Q. What other person or persons were there during that meeting?

A. There were several there, several other parties, but I do not just recall who they were.

Q. Name those that you can recall.

A. I do not know.

Q. Were there any records kept of any of the meetings which you attended, where the question of ore and coke rates was considered?

A. Do you mean following this——

Q. At any meeting?

A. I think there were records kept, minutes, made by the secretary at the meetings, where the coal rates were considered.

Q. Who was that secretary?

A. At that time I think it was Mr. C. E. Childers.

Q. Where is he from?

A. Pittsburgh.

Q. Were there any records kept of any other meetings attended by you where the question of the rates on ore and coal was considered?

A. I think the records of the coal meetings were kept. I do not believe there was any record kept of ore, where the ore matter was discussed, because it was a general discussion, and there was really no record to keep. That is my general recollection.

Q. Who kept the records in respect to the coal?

A. Mr. Childers.

Q. The same Mr. Childers that you have spoken of?

A. Yes, sir.

Q. Who is Mr. Childers; what employment is he in?

A. At that time he was secretary of this Western Pennsylvania and Eastern Ohio Railway Traffic Association.

Q. At what time was that?

A. 1909.

Q. When did that association begin?

A. Beyond my recollection, Judge.

Q. Is it in existence now?

A. Well, it has never formally gone out of existence, but it has never had a meeting, and it is practically obsolete.

Q. When was its last meeting that you know of?

A. As a meeting of the association itself I do not recollect ever having attended a meeting, that is, where the association itself——

Q. (Interposing) When was the last meeting of those representing the ore-carrying interests that you attended; when was that?

A. I think there was no meeting of the association at all, but the ore-carrying roads, which were those I mentioned a while ago, had some conferences on the subject, but no regular meeting of the association.

Q. Did that association have a recognized list of membership?

A. Yes.

Q. Did it have any articles of agreement?

A. No, sir; no constitution or by-laws or articles of agreement, or anything of the kind.

Q. I believe you stated you did not know when it was formed?

A. I stated that I did not, yes.

Q. That was my recollection.

A. It antedates my connection with it.

Q. State whether or not at any meeting, either of the association or of those railroads interested in the carriage of ore, at which you were present, there was ever present any representative of the Bessemer & Lake Erie Railroad Company.

A. I think that there was a representative present at that conference with Mr. Campbell's committee.

Q. Who was he?

A. Mr. Baird, the general freight agent.

Q. What are his initials?

A. F. C. Baird.

Q. Was Mr. Baird at any previous meetings at which you were present?

A. I do not recall them.

Q. Do you recall that he was not?

A. Yes. At the meeting of the roads interested in the carriage of coal, in the spring of 1909, I do not think there was any representative of the Bessemer & Lake Erie Road present. That is my recollection.

Q. That was a coal meeting?

A. Yes.

Q. How about ore meetings?

A. I never saw any representative present at any conference with regard to ore, to the best of my recollection.

Q. The conference you say in New York, though, was in regard to ore, was it not?

A. That was on complaint by Mr. Campbell.

Q. But it was in respect of ore?

A. Yes; complaining of the ore rates.

Q. And Mr. Baird was at that meeting?

A. He was there. Mr. Baird, as I recall it, was in New York on some other business, and just happened into this conference.

Q. And he was in the conference?

A. He was in the room.

Q. When this association was an actual association, and before it got to the stage of these informal meetings of which you speak, who were the members of that association?

A. The association, so far as the name goes and the membership is concerned, is to-day just what it has been.

Q. But I understood you to say that there had been no meeting of the association, as such, recently?

A. No.

Q. When there were meetings, as an association, state what railroad companies were members of it.

A. (Referring to paper). The Baltimore & Ohio—

Q. What are you reading from?

A. A letterhead.

Q. That refreshes your memory, does it?

A. Yes, sir. (Continuing.) The Erie Railroad, the Lake Shore & Michigan Southern, the Pennsylvania Railroad, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, the Pennsylvania Company, the Pittsburgh & Lake Erie Railroad, and the Wheeling & Lake Erie Railroad.

Q. Let me see that paper please.

(The witness handed paper to counsel.)

This memorandum from which you were reading is a letterhead, is it?

A. That is a letterhead, yes.

Q. When was this printed, if you know? Is it an old or a recent letterhead?

A. It is an old one; because Mr. Childers is no longer the secretary of the association. It has no secretary.

MR. LINDABURY: And he is named as secretary on the letterhead?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. And you are named as chairman?

A. Yes, sir.

Q. Is there any chairman now?

A. I still have the distinguished honor of being chairman, as far as it goes.

Q. It has a chairman, but no secretary?

A. No secretary.

Q. Has it an office now?

A. It has no office, no.

Q. I see it stated here that the office is 614 Lewis Building. That appears on the letterhead.

A. That was Mr. Childers' office. That was the office of the secretary. It has no office now.

Q. When did you cease to use these letterheads? At what period did Mr. Childers cease to be secretary?

A. I think Mr. Childers has been out—that is, we discon-

tinued the secretaryship—within the past eighteen months or two years.

Q. Where are the papers, if there are any, of this association? In whose possession are they?

A. I presume they are in the office of the secretary; but whether he has them now or not, I don't know.

Q. Are any of them in your possession?

A. Only such as I handled myself.

Q. What character of papers are those that you handled yourself and that are in your possession?

A. Communications that I would send out; calls for meetings. I usually used the letterhead of the association.

Q. When did you last call any meeting, as chairman?

A. I cannot recall, Judge. If I were to call a meeting today, I would use the letterhead of the association.

Q. Have you anything else except letterheads, upon which you would call meetings? Have you any of the records of that association, or any other papers?

A. No, sir.

Q. Then, really, you have no records?

A. Nothing beyond that.

Q. Nothing beyond letterheads?

A. No.

Q. I do not know whether I asked you or not, but I will ask you again: When did you send out the last communication on such a letterhead?

A. I really cannot recall.

Q. Have you sent one within a year?

A. No; I think not within a year. I don't remember just the occasion that would have necessitated it. My recollection is that it was a meeting to consider the coal rates.

CROSS EXAMINATION,

By Mr. Severance:

Q. You stated that Mr. Baird happened to be in New York and came into that meeting, at which Mr. Campbell's committee made its complaint?

A. Yes, sir.

Q. Mr. Baird took no part in determining what should be done upon that complaint, did he?

A. My recollection is that Mr. Baird simply sat there and did not open his mouth or say a word. He did not participate, in other words.

Q. And the decision of yourself and the other gentlemen as to what action your respective roads would take on the complaint was not made until later, was it, and communicated to Mr. Campbell about a month later?

A. That is my recollection.

MR. SEVERANCE: That is all.

MR. DICKINSON: That is all.

JOSEPH G. BUTLER, JR.,

was called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Where do you live?

A. Youngstown, Ohio.

Q. I suppose you are over 50, and reasonably young, at that?

A. I have reached the Scriptural limit.

Q. Which one—three score and ten? You know there are two.

A. I was 71 on my last birthday.

Q. Are you engaged in any business, Mr. Butler?

A. Yes, sir.

Q. In what business?

A. The iron and steel business.

Q. Manufacturing iron and steel?

A. I am vice-president of the Brier Hill Steel Company. I am a director in the Youngstown Sheet & Tube Company.

Q. How long have you been vice-president of the Brier Hill Steel Company?

A. Since it was formed.

Q. When was that?

A. Last February.

Q. How long have you been a director in the Youngstown Sheet & Tube Company?

A. Ten years.

Q. Are you interested at all in the making of pig iron?

A. Yes, sir. The Brier Hill Steel Company are makers of pig iron.

Q. How long have you been interested in the production of pig iron, Mr. Butler?

A. I went into business on my own account in 1866.

Q. Since that have you constantly been in that business?

A. Yes, sir. I was then manager and part owner of the Girard Iron Company, and I have made one change since then, when the Brier Hill Iron & Coal Company and the Youngstown Steel Company were merged into the Brier Hill Steel Company.

Q. Were you ever connected with any pig iron association, or associations, and, if so, what associations; what were their names; and give the periods of your connection with them, and the capacity in which you were connected with such association or associations.

A. The only real pig iron association that I have been connected with is what is called the Bessemer Pig Iron Association.

Q. When was that association formed?

A. As near as I can remember, about 17 years ago.

Q. Were you an officer of that association?

A. Yes, sir.

Q. What position did you first hold with it?

A. I think I was the secretary at first.

Q. How long did you continue as secretary?

A. I do not remember. I think it was a year or two.

Q. Then what position did you hold with it?

A. I was president.

Q. What position?

A. President—chairman.

Q. How long did you hold that position?

A. Up to the time it went out of business.

Q. When did it go out of business?

A. About two years ago.

Q. Who were the members of that association?

A. The Brier Hill Iron & Coal Company, the Youngstown Steel Company, the Youngstown Sheet & Tube Company, Pickands, Mather & Company, M. A. Hanna & Company, the Struthers Furnace Company. I cannot recollect, but there were two or three others—practically all of the independent merchant furnaces in the two valleys, the Mahoning and Shenango Valleys. Andrews & Hitchcock Iron Company were members.

Q. Were all the people you have named members of that association prior to April, 1901?

A. Possibly not all of them.

Q. If there were any that were not, name those who subsequently became members.

A. I cannot tell that from recollection.

Q. State as near as you can those who were members prior to the formation of the United States Steel Corporation.

A. Practically all that I have named. Possibly one or two others that I have not named.

Q. In 1900, or about that time, or the early part of 1901, what was the combined output of the members of that association?

A. I should think about a million tons a year.

Q. What were your duties as secretary of that association?

A. My principal duty was looking after statistics, keeping in touch with the furnaces, selling pig iron when anybody wanted to buy it.

Q. You said looking after statistics. What character of statistics?

A. Well, we kept track of whether the furnaces were in blast or out of blast, and the stocks of pig iron on hand, and to some extent the stocks of ore.

Q. How were those statistics gathered?

A. I sent out a blank and had them filled out.

Q. The secretary would send out a blank to the various members?

A. Yes, sir, and I send them out yet. I send them out now on my own account.

Q. But not as a member of the association?

A. No.

Q. But during the time you were secretary, of which you have spoken, blanks were sent out, and those blanks showed what?

A. They showed whether the furnace was in or out of blast, and showed whether they had pig iron on hand, and the quality.

Q. What were your duties, Mr. Butler, when you became president of the association?

A. Practically the same.

Q. And were statistics of the same character gathered, and in the same way that you have stated?

A. Yes, sir.

Q. Did that association have anything to do with the sale of pig iron?

A. Yes, it had.

Q. Explain fully what it did in respect of selling pig iron.

A. If we got an inquiry for pig iron I would either call the members together, or communicate with them by telephone or letter and say that I had an opportunity of making a sale and ask them if they wanted to participate in it, and if they were satisfied with the price, and so on, and usually we would get together and talk it over.

Q. Did the association derive any profit from this sale?

A. None whatever.

Q. You say you would get together and talk it over?

A. Yes, sir.

Q. Who would get together and talk it over?

A. A representative from each furnace, usually.

Q. Would get together and talk it over?

A. Yes, sir.

Q. Were the sales made by the association, or directly by the various members, if they participated?

A. They were made by the different members. The con-

tracts were made out by each member. The association never made any contracts at all. It was a transaction between each furnace company and the purchaser.

Q. Was there ever any apportionment of these sales among the various members?

A. In a way there was, but no one took any more than he cared for. If the price was not satisfactory he would not take any. Very frequently some of the people did not want any of the orders.

Q. But suppose the various members all wanted to participate; was there then an apportionment, and, if so, on what was it based?

A. To some extent on the capacity of the furnaces.

Q. I will ask you whether or not sales were made from time to time in which the various members participated, and participated upon a basis of representation dependent upon the relative capacity.

A. No, I don't think so.

Q. I understood you to say that sales were based on capacity?

A. I explained that. No furnace company took an order or any part of an order—for instance, if I would sell a hundred thousand tons, no furnace took any part of it unless the price was satisfactory.

Q. I understand; but suppose they all wanted to participate in a particular sale to which you, as secretary or president of the association called their attention, was it apportioned among them; and, if so, on what basis?

MR. LINDABURY: I object. It does not appear that any such situation ever arose. I object to an inquiry of this character. I think the witness ought to be asked to explain the transaction or the method of doing the business.

By MR. DICKINSON:

Q. Go ahead and answer the question.

A. We had a record. No two furnaces hardly ever make the same quantity, and the order, if the furnaces wanted it, was apportioned in accordance with their capacity.

Q. State whether or not before that association ever arose the question of the members of the association shutting down their furnaces and curtailing their product.

A. Before the association was formed?

Q. No, not before it was formed, but whether that ever came before the Association as an association.

A. I think possibly that may have been discussed, although I have no clear recollection of it.

Q. I will ask you whether or not the members of that association from time to time by agreement curtailed their product by shutting down over certain periods a portion of their furnace capacity.

A. No, sir; not by any agreement.

Q. Did they or not do that thing after a consultation on the subject?

A. I think each furnace company did what they thought it was to their interest to do.

Q. I will ask you whether or not there were any meetings of members of that association at which was discussed the question of curtailing the product of pig iron in that territory.

A. I think it was one of the subjects that was discussed.

Q. State whether or not, following those meetings, there was a curtailment by members of that association, shutting down a portion of their furnace capacity.

A. I could not answer that from recollection. It is a good while ago.

Q. Can you recall or not whether at any time during your connection with that association as secretary or president, following such a conference, in regard to the amount of product on the market, there was a cutting down by the members of that association of their furnace capacity?

A. As I have already said, each member did what he thought was for the best interests of his particular concern.

Q. Do you know, Mr. Butler, whether any of those members, following such a meeting, did, as a matter of fact, shut down a portion of their furnace capacity and reduce the product?

A. I think it is possible that some of them did. They may have had other reasons in mind. The market may have been dull, and they may have wanted to make repairs, and it was a good time to make them, when there was a surplus on hand.

Q. You say you think it is possible?

A. Yes.

Q. I am asking what you know—whether you know or not that such was done.

A. No; I would not say positively that it was.

Q. Would you say positively that it was not?

A. No; I would not.

Q. Where are the records of that association?

A. There are no records.

Q. Were there any records?

A. There were records. We turned them in to our attorney after we had a meeting. There were some memorandums made. There are none now.

Q. At what periods did you turn them in to your attorneys?

A. From time to time.

Q. When did you last turn in any?

A. When we concluded to quit the business.

Q. When was that?

A. About two years ago.

Q. To what attorney did you turn them in?

A. James A. Hoyt.

Q. Where is he?

A. In Cleveland.

Q. What did you turn in to him?

A. There were a lot of weekly letters. I used to get out a weekly letter giving information, as far as I could gather it. We turned those in.

Q. To whom were those weekly letters addressed?

A. They were addressed to each individual member of the association. It was a part of my business to collect statistics and get in touch with the market generally. While I did not exactly give advice, I gave them the benefit of what knowledge I obtained and sent it out to them in the shape of a weekly letter.

Q. You have spoken of weekly letters that you turned over. What else did you turn over to him?

A. There was no record book. There were just memoranda showing the membership and the capacity and whatever papers we had. There were not very many of them.

Q. I am asking you to say, as far as you remember, the actual character of the papers that you turned over to Mr. Hoyt the last time. Just state as fully as you can and describe as fully as you can the papers that were turned over to him.

A. They were copies of these weekly letters and memoranda in regard to the tonnage and capacity, and things of that sort.

Q. What period did they cover—those that were turned over last?

A. They covered perhaps a year.

Q. Had you ever turned over any before that to him?

A. Yes.

Q. When was the time next preceding this that you turned over papers to him?

A. I do not remember clearly.

Q. How often did you turn over papers to him?

MR. LINDABURY: I think I ought to note an objection to this testimony on the ground of its irrelevancy and immateriality.

THE WITNESS: Infrequently. I could not say. Perhaps once in a few months. Perhaps not oftener than once a year.

By MR. DICKINSON:

Q. When did you begin turning over papers to Mr. Hoyt?

A. I could not remember that.

Q. What is the first year you can recall that you ever turned over any papers to him?

A. I cannot recall any specific year.

Q. Can you recall that you turned over papers to him more than one time?

A. Yes.

Q. More than twice?

A. I should think perhaps half a dozen times.

Q. How far back as nearly as you can remember, would the first instance be?

A. I could not tell from memory.

Q. How about 1904? Did you turn over any to him prior to that time?

A. I do not remember.

Q. Have you any of the papers of this association in your possession or under your control?

A. No, sir.

Q. None whatever?

A. None whatever. Mr. Hoyt was our attorney representing the people, and was supposed to keep us out of difficulty. I think he did, too.

Q. How long was he your attorney?

A. From the time the association was first formed.

Q. You say he was supposed to keep you out of difficulty. What do you mean by "keep you out of difficulty"?

A. We did not want to violate the law. We were law abiding citizens.

Q. Mr. Butler, state whether or not at any time the association brought to the attention of the members of the association the question of selling pig iron to the United States Steel Corporation; and if so, whether such sales were made to the United States Steel Corporation.

A. The United States Steel Corporation was one of our best customers. Mr. Dinkey, or Mr. Schwab, or Mr. Corey, whoever was president at the time, either of the Carnegie Steel Company or the Corporation, would make an inquiry. They would perhaps send for me, and say that they wanted to buy a certain quantity of pig iron and were willing to pay a certain price. I would then communicate with the different members, and tell them that I had an opportunity of selling a certain quantity of iron for a certain delivery, and usually it resulted in a sale.

Q. Did that occur frequently or infrequently?

A. During a certain period they bought iron from us frequently. They have not bought very much lately.

Q. What amounts would they buy? Just state generally.

A. All the way from 100,000 tons up to, I think on one occasion, 400,000 tons.

Q. State, Mr. Butler, as nearly as you can, the period

during which those sales took place, by years. I do not expect you to recall the exact dates, of course.

A. I do not think there was any intermittence at all. I think there were sales from the beginning down to a few years ago.

Q. Down to a recent time?

A. Yes, sir.

Q. When was the last purchase made that you recall?

A. About two years ago, I think. There have been sales made since by the individual furnaces that were formerly in the association.

Q. But their attention was not called to it by the association?

A. No, sir. There was no association.

Q. You are only speaking now of the time when the association itself was in activity?

A. Yes. I think the last sale was about two years ago.

Q. Prior to that time had the United States Steel Corporation been a constant purchaser?

A. The United States Steel Corporation?

Q. I mean the subsidiaries.

A. Well, that is better. The Carnegie Steel Company and sometimes the National Tube Company—usually the Carnegie Steel Company—made the purchase and distributed the tonnage.

Q. I understood you to say that was done with considerable regularity?

A. Yes, sir.

Q. Throughout the whole period up to the time the association ceased?

A. Yes, sir. They were one of our best customers.

Q. Mr. Butler, please state whether or not you attended a meeting in Chicago, on or about July 26, 1900, where the leading steel and Bessemer pig iron interests were represented, said meeting being held in the office of the Federal Steel Company, and having been called by Mr. E. H. Gary, of the Federal Steel Company; Mr. C. M. Schwab, of the Car-

negie Steel Company, and Joseph G. Butler, Jr., representing the Bessemer Furnace Association.

A. I have a pretty good memory, but I do not recall that meeting.

Q. Do you recall having called or participated in a call for any such meeting in Chicago at any time?

A. No, sir; I do not. That is a good while ago. I cannot recall any such meeting.

Q. Do you recall ever having attended any meeting in Chicago at which were present Mr. E. H. Gary, representing the Federal Steel Company; Mr. C. M. Schwab, representing the Carnegie Steel Company, and others representing the steel and pig iron interests?

A. No, sir; I cannot recall having attended any meeting in Chicago on that business.

Q. Do you recall ever having attended at any place any meeting of the representatives of the leading steel and Bessemer pig iron interests prior to the formation of the United States Steel Corporation?

A. No, sir; I cannot.

Q. State whether or not you were at a meeting about October 1st, 1903, held in the offices of the Carnegie Steel Company, in the Carnegie Building, Pittsburgh, where the iron and steel interests were represented.

A. I do not recall that particular meeting.

Q. Do you recall any meeting in the year 1903, which took place at the office of the Carnegie Steel Company, at which you were present as representative of the Bessemer Pig Iron Association?

A. I do not recall that.

Q. Mr. Butler, state whether or not you acted as one of a committee of five appointed at a meeting which took place some time in the year 1903 at the office of the Carnegie Steel Company, Carnegie Building, Pittsburgh, which committee was appointed for the purpose of drawing up a plan to consider the question of curtailing over-production.

A. I do not recall it.

Q. If you do not recall a meeting at that time and place,

state whether or not you, at any time, ever acted as a member of a committee composed of J. G. Butler, Jr.; D. B. Meacham, of the Cleveland Furnace Company; W. P. Snyder, of the Shenango Furnace Company; D. G. Kerr, of the United States Steel Corporation, and A. W. Thompson, President of the Republic Iron & Steel Company, which committee took under consideration the question of curtailing the production of pig iron.

A. I do not remember any specific meeting, but I think I did take part in something of that sort.

Q. As a member of some such committee?

A. I think so, yes.

Q. State whether or not these other gentlemen named were members of that committee.

A. I do not recall. I know them all very well, and I imagine that if there was such a committee they were on it. They were all interested in the pig iron business.

Q. Can you say that you either were or were not a member of such a committee, composed of yourself, the said Mr. Meacham, the said Mr. Snyder, the said Mr. Kerr and the said Mr. Thompson?

A. I do not recall it specifically enough to say positively that I was.

Q. Were you ever a member of any committee which took under consideration the question of curtailing the production of pig iron, which committee made a report on that subject?

A. I do not recall it specifically enough to state positively that I made any report or was a party to any.

Q. Did you ever serve on any such committee with Mr. D. B. Meacham?

A. I do not recall it.

Q. Did you ever serve on any such committee with Mr. W. P. Snyder?

A. I cannot recall any specific time.

Q. Can you recall any time, specific or not specific, that you served on such a committee with Mr. Snyder?

A. No; I cannot.

Q. Can you recall any time that you served on such a committee with Mr. D. G. Kerr?

A. I cannot recall.

Q. Can you recall any time that you served on such a committee with Mr. A. W. Thompson?

A. Not clearly, no sir.

Q. Do you recall anything about serving on such a committee with Mr. Thompson?

A. No; I do not.

Q. Did you, at any time, join with any committee in making any report either to the furnace operators individually, or to another meeting, in respect of the curtailment of the production of pig iron?

A. I have no recollection of it; I do not recall it.

Q. Did you ever serve on any such committee, upon which there was a representation of any of the subsidiaries of the United States Steel Corporation?

A. I do not recall it.

Q. Mr. Butler, do you know of any committee serving during the year 1903, or about that period, which took under consideration the question of the curtailment of pig iron; whether any such committee made an announcement to the effect that furnaces with an annual output of 12,000,000 tons will curtail production one-fourth from October 1, 1903, to the end of the year, the curtailment of production thus amounting to 750,000 tons?

A. I do not recollect making any such report or being a party to it.

Q. Do you know whether or not in the latter part of 1903 there was a general curtailment participated in by the producers of pig iron in the Mahoning and Shenango Valleys, by which the production of pig iron was curtailed?

A. I do not remember that specific year. I know we curtailed production when we had too much on hand.

Q. When there were periods during which there was an over production or an over supply, what method was followed in cutting down the production?

A. Well, as a rule, each fellow did what he thought was for his best interest. I know that is what we did at Brier Hill. If we wanted to run our furnace and pile our metal up and wait for a better market, we did it; and if we did not, we

shut down. Sometimes we would anticipate shutting down by making repairs perhaps a little sooner than we otherwise would make them, if the market were better. I think that applied to nearly every furnace company in the two valleys.

Q. I will ask you whether or not any of those shuttings down were simultaneous by competitive companies, there in the valleys.

A. I do not recall any simultaneous shutting down.

Q. Were any such curtailments preceded by meetings of manufacturers of pig iron?

A. Not that I recall.

Q. What iron producers would be embraced within what was termed the Central West?

MR. LINDABURY: At what time?

By MR. DICKINSON:

Q. Well, 1903.

A. That would take in the Mahoning and Shenango Valleys as the western limit. It would take in Cleveland, Columbus, the Hocking Valley, Toledo and Detroit, if there were any furnaces at this particular time in existence there.

Q. State whether or not, Mr. Butler, at that period, in that territory, a decline of 80,000 tons per week would have been a heavy or a small decline.

A. It would be rather a heavy decline.

Q. What was the output of pig iron at that time for the whole United States?

A. I could not carry that in my head. I cannot tell you.

Q. What was the output of the Middle West per week at that time, running to its full capacity?

A. I could not tell you. When I want to get such information I look it up in one of Mr. Swank's books.

Q. He would give that, would he?

A. Yes, sir. The annual report of the American Iron & Steel Association gives all those figures.

Q. Did the Bessemer Pig Iron Association have any committees?

A. I do not think so.

Q. I will ask you whether or not it had an executive com-

mittee composed of Samuel Mather, Harvey H. Brown, Edward L. Ford, Robert Bentley, Frank Hitchcock, L. C. Hanna, and J. G. Butler, Jr.

A. Yes, sir. I thought you meant subsidiary committees. There was an executive committee, and that is a correct roster.

Q. Did that committee exist in the year 1905?

A. I think so.

Q. What were the duties of that committee?

A. To consider the general conditions.

Q. What general conditions?

A. Of the pig iron business.

Q. Be a little more particular, if you can. What features of the general condition?

A. Whether it was prosperous, or otherwise.

Q. Anything else?

A. No. The duties of that committee were not very onerous. While they attended there the work was done by the representatives from each company.

Q. Did they consider the question of the amount of iron on hand in the market?

A. Sometimes; yes, sir.

Q. Did they consider the question of what was being produced?

A. Yes, sir.

Q. As to what furnaces were in operation, and what furnaces were not in operation?

A. I furnished that information.

Q. Did they consider the question of what prices were prevailing?

A. No. There never was very much said about prices.

Q. They talked about everything but prices?

A. We had to sell at the market price.

Q. Mr. Butler, I will ask you whether or not the Bessemer Pig Iron Association at times directed concerted movements by which a portion of the blast furnaces it controlled would bank down for certain periods of time, when an overstocked pig iron market made such restriction of output necessary.

A. No, sir; it never made any such ~~distinction~~ direction.

Q. Did or did not the members of the association take any such action?

A. That is possible.

Q. What effect, if any, did the organization and action under the Bessemer Pig Iron Association have upon the steadying of prices of pig iron?

A. I think it had a very good effect.

Q. What do you mean by a good effect?

A. It enabled us to get a little more than cost for our product.

Q. Mr. Butler, state whether or not you compiled and sent out monthly blast furnace reports of the production of pig iron in the Central West, keeping them advised of the fluctuations in pig iron output, and to people other than members of the Bessemer Pig Iron Association.

A. No; not in that form.

Q. If you sent out any, please state what?

A. We sent out statements simply showing the furnaces in and out of blast, and the percentage.

Q. Where did you send them to?

A. To everybody in the pig iron business. I am doing it yet.

Q. Did you send any of them to the Iron Age?

A. I think so.

Q. Did the Iron Age representative ever call on you from time to time for information on these subjects?

A. Frequently. I gave him information and he gave me information. The same is true of the Iron Trade Review.

Q. Can you name some of the representatives of those two papers that called on you at various times?

A. Mr. Robert A. Walker. He was the local representative here of the Iron Age. The Iron Trade Review have made two or three changes in their representatives. Mr. Stark was here at one time, and Mr. Stephenson.

Q. For what purpose did you give that information?

MR. LINDABURY: That is objected to as irrelevant.

THE WITNESS: They were the two representative trade papers of the country, and they wanted to get what would be correct information to go to the general public.

Q. You expected it to be published, did you?

A. Undoubtedly, or I would not have given it to them.

Q. Did you, yourself, read the Iron Age?

A. Yes. I read it yet.

Q. Did you read it as a source of information on the pig iron and steel business of the country?

A. Yes, sir.

Q. What was the character, Mr. Butler, of the Iron Age, as to recording correctly the current history of the business of pig iron and steel in the United States?

A. Very good indeed. It is considered very reliable.

Q. What was the character of the Iron Trade Review, as to recording correctly the current history of the business of pig iron and steel in the United States?

A. Very reliable.

Q. Did you furnish their representatives with information for the purpose of being published?

A. Yes, sir.

Q. Did you ever correct them for any misstatement as to any information that you gave them?

MR. LINDABURY: I object to that.

A. That is assuming that I gave them a misstatement, is it not?

By MR. DICKINSON:

Q. Well, I will word it so that there will be no doubt about it. Did you ever correct them as misstating in their paper any information that you had given them with the expectation that it would be published?

A. I do not recall it; if they did not publish it as I gave it to them, I very naturally would correct them.

Q. If you did correct them, you do not recall it?

A. I do not recall it, no.

Q. State generally whether or not they reported you correctly.

MR. LINDABURY: Objected to as irrelevant.

A. Yes, sir.

By Mr. Dickinson:

Q. State whether or not on or about January 30, 1908, there was a meeting of the blast furnace interests of the Pittsburgh, Mahoning Valley, Shenango Valley, Wheeling, Columbus, Scottdale and other nearby districts, held in the Duquesne Club of Pittsburgh, at which there was an agreement to maintain prices for the different grades of pig iron, on the following basis, to-wit: Bessemer, $18; basic, $17; No. 2 foundry, $17; gray forge, $16; all at Valley Furnace, to which a 90 cent freight rate to Pittsburgh should be added; and whether or not you were chairman of that meeting.

A. I think there was such a meeting, but there was not any agreement. There was talk about prices, and so on; but I do not recall being at any meeting where any agreement was made as to any specific prices.

Q. Were you chairman of the meeting?

A. I think I was, yes.

Q. Who were present at the meeting?

A. I think you have the representation there, about as you have read it.

Q. But I mean what individuals were present.

A. I do not recall any one specific individual.

Q. State whether or not, following that meeting, an announcement of prices, such as I have given above, was made, and whether or not such were the prices that were followed.

A. I have already stated that there was no agreement about prices that I was any party to.

Q. I am not asking you now whether or not there was any agreement, but I am asking you whether subsequent to that meeting there was an announcement in the trade journals of the prices as I have given them in my question, and whether or not those interests represented at that meeting sold at those prices.

A. I made no such announcement.

Q. Was there such an announcement made in the trade journals, of the prices, of the date following that meeting?

A. There may have been.

Q. Was it customary for the trade journals, such as the Iron Age, to announce prices?

A. They were around hunting news all the time, and giving their opinion as to what prices were.

Q. How had the prices been prior to that meeting?

A. I do not recall.

Q. What was the condition of the pig iron business, satisfactory or unsatisfactory?

A. I do not remember. I would have to look up the records.

Q. What record?

A. Mr. Swank's statistics.

Q. This is 1908 that I am calling your attention to.

A. I would have to look it up for the last year in order to answer it correctly.

Q. Did you ever have such meetings as that, Mr. Butler, when business was booming and prices were satisfactory?

A. Oh, we had frequent meetings about different matters—about labor matters, and all sorts of things connected with the business.

Q. At this meeting were prices discussed?

A. I do not recall the meeting specifically enough to answer that question.

Q. At this meeting was any announcement made by you or by any other one present as to prices, that you or the company represented by any other person would sell at?

A. I think it is possible we may have said that we would not sell lower than some specific price.

Q. You say it is possible you may have said it?

A. Yes, sir.

Q. I will ask you what you did say.

A. I do not recall it with sufficient clearness to answer the question.

Q. Was there any price cutting in the early part of 1908 or the latter part of 1907, in pig iron?

A. What do you mean by "price cutting"?

Q. I mean people going out after business and selling under what had been the quoted current prices?

A. I think everybody looked out for himself. If he wanted to take an order at a little bit less, he did it.

Q. I will ask you whether or not the trade at that time was in a healthy condition or in a demoralized condition.

A. What year was this?

Q. Next preceding February 13, 1908. I do not mean the year preceding, but the time next preceding February 13, 1908.

A. I do not recall sufficiently to answer that specifically. There are a great many ups and downs in the pig iron business.

Q. I will ask you whether or not you attended, on or about February 13, 1908, a meeting at which were represented the pig iron manufacturers of the Central West, at which Mr. Corey, president of the United States Steel Corporation, was present.

MR. LINDABURY: Held where?

MR. DICKINSON: I have not placed it. I will say anywhere.

A. Do you mean strictly a pig iron meeting, a meeting of pig iron manufacturers?

By MR. DICKINSON:

Q. No, I will not restrict it to that. I will say any meeting at which any question in relation to pig iron was discussed, and at which Mr. Corey was present?

A. I do not keep a diary, and I can not remember any specific time. I think there was perhaps an ore meeting. There was an ore meeting at Cleveland, and pig iron may have been talked of; in fact, I think it was.

Q. Was Mr. Corey present?

A. Yes.

Q. Where?

A. I think that was held in one of the offices in Cleveland. I am trying to recall where it was. Perhaps it was Harvey H. Brown or the Cleveland Cliffs Iron Company.

Q. At what time was that meeting?

A. I do not remember the date, but there was a meeting of the ore and pig iron people held in Cleveland two or three years ago; but I cannot remember the exact date.

Q. Who were present at that meeting?

A. They were mostly Cleveland people connected with the trade.

Q. How long after the panic did that occur?

A. I think it was in 1907 or 1908. It was three or four years ago, anyway.

Q. Either 1907 or 1908?

A. I think so; although I would not want to say that positively.

Q. Have you stated who were present at that meeting—the individuals?

A. No.

Q. Please state them?

A. I will state those I recollect. I think Mr. Samuel Mather was there; Mr. Oglebay, of Oglebay, Norton & Company, was there; I think Mr. Billings, of Todd, Stambaugh & Company; I think Mr. Richards, of M. A. Hanna & Company, and perhaps some others. Those are all I can recall.

Q. Who called the meeting?

A. I do not know. I did not.

Q. From whom did you get notice or word or information that there would be such a meeting?

A. I think I got it from Mr. Billings. Mr. Billings is the president of Todd, Stambaugh & Company, and I am connected with the house, and I think he asked me to come up to attend the meeting.

Q. What occurred at that meeting?

A. I could not answer that. I took very little part in it.

Q. Were you there throughout the meeting?

A. No; I did not stay throughout the entire meeting.

Q. Were you there when it opened?

A. No; I do not think so. I think my train was a little late and I got in after the meeting had opened.

Q. What time did you get in the city?

A. Probably about 11 o'clock.

Q. Did you go direct to the meeting?

A. I think so.

Q. What time did you leave the meeting?

A. I cannot remember.

Q. How long were you at the meeting altogether?

A. Probably a couple of hours.

Q. While you were there state what was said in regard to pig iron or ore?

A. The general condition of the ore business was talked of, but I cannot tell you anything specific. As I say, I was there in a subordinate position, invited by Mr. Billings, my principal, and he was the active man representing the house, representing the firm.

Q. Was there any discussion of prices there?

A. I think possibly there was.

Q. Of iron and ore both?

A. I think so.

Q. Do you know what price was particularly spoken of in respect of pig iron?

A. I do not remember.

Q. I will ask you whether or not the question of maintaining the basis of $17 a ton at Mahoning Valley and Shenango Valley Furnaces, for No. 2 Foundry iron was discussed?

A. I do not recall it.

Q. Do you say that Mr. Corey was there?

A. Mr. Corey was there, if that is the meeting you are talking about.

Q. I am talking about the meeting at which I understood you to say Mr. Corey was present.

A. Yes.

Q. Did you hear Mr. Corey say anything?

A. Yes; but I do not remember what he said. I remember what he said in the evening, but——

Q. (Interposing) Do you remember what he was talking about?

A. Talking about the general condition of the business.

Q. You were not discussing the weather?

A. No, sir.

Q. Did you talk about prices?

A. Very naturally.

Q. Did Mr. Corey talk about prices?

A. I think he did; yes, sir.

Q. What did he say?

A. I don't remember.

Q. You say Mr. Corey was there?

A. Yes.

Q. State whether or not Mr. W. P. Snyder was there.

A. I think he was, yes.

Q. Was Mr. Samuel Mather there?

A. Yes; I have already stated from my recollection that he was there.

Q. And you were there; you stated that?

A. Yes.

Q. How about John A. Topping?

A. I do not distinctly recall Mr. Topping being there. He may have been there.

Q. How about Mr. B. F. Fackenthal, Jr.?

A. I do not recall him.

Q. How about J. C. Mabon?

MR. LINDABURY: Give the companies they represented, please.

By MR. DICKINSON:

Q. Mr. Mabon represented the Sloss-Sheffield Steel & Iron Company.

A. I do not recall him. He may have been there.

Q. W. A. Rogers, of the Buffalo & Susquehanna Iron Company?

A. I think he was there.

Q. Frank S. Witherbee?

A. Of Witherbee, Sherman & Company, yes; I think he was there.

Q. E. S. Cook, of the Warwick Iron & Steel Company?

A. I think he was there.

Q. Charles H. Zehnder, of the Alleghany Ore & Iron Company?

A. I do not recall him specifically. He may have been there.

Q. Were you or not a member of one of the sub-committees appointed subsequent to the first Gary Dinner in New York, which committee was known as the Ore & Pig Iron Committee?

A. I think I was; yes, sir.

Q. I will ask you whether or not these gentlemen whose names I have called were also members of that committee.

A. I would not want to answer that without looking at the records. I think they were, but I am not sure.

Q. Who was chairman of it?

A. Mr. Corey.

Q. State whether or not you were at a meeting on or about June 11, 1908, in New York City, where there was a representation of iron and steel men.

A. I may have been. I do not recall it specifically.

Q. Were you at any meeting at or about that time in New York City, at which Judge Gary was present?

A. I do not recall it specifically. I probably was, though. I attended a great many meetings. We have a meeting at Youngstown tonight that I am anxious to attend.

CROSS EXAMINATION.

By Mr. Lindabury:

Q. Mr. Butler, I wanted to ask you about this matter of sales of pig iron by members of your association, apparently through the good offices of the officers of the association. You said that the Steel Corporation was one of your largest customers. Did you also sell to other large manufacturers?

A. Yes, sir; we sold frequently to the Cambria Steel Company, and to the Jones & Laughlin Steel Company, and to the Youngstown Sheet & Tube Company. The Youngstown Sheet & Tube Company were large customers. Also we sold to the Republic Iron & Steel Company, and, infrequently, to the Pennsylvania Steel Company.

Q. Was the price in each case a matter of barter?

A. Yes, sir.

Q. Were these orders usually large?

A. Yes, sir.

Q. Were they or not larger than any one of the manufacturers could fill?

A. No one furnace could have handled the business.

Q. I think you said the orders of the Steel Corporation ran from——

A. (Interposing) 50,000 to 400,000 tons.

Q. Averaging about what?

A. I should think the sales would average 100,000 tons.

Q. Was that more than any one, or even two or three of the furnace men could supply?

A. Yes, sir.

Q. Tell me about the method by which that business was done. Did you receive an offer, for instance?

A. I would get an inquiry from Mr. Dinkey, of the Carnegie Steel Company, for instance. Say they were in the market for a specific tonnage, and covering a specific period of time. I would usually go in and have a talk with him about it, and find out what they were willing to pay, and I knew pretty well, as I was in pretty close touch with our own people, what they were willing to sell for; and I would figure on about what I thought I could get out of them, and then I would go home and report it, and it usually resulted in a sale.

Q. How much bargaining did you usually have in those cases?

A. I tried to get all I could for the people I represented.

Q. And how about Mr. Dinkey?

A. He tried to get it as cheap as he could.

Q. Was he a pretty stiff trader?

A. Yes, he was.

Q. And he negotiated pretty closely, did he?

A. We frequently differed about the price, and I sometimes convinced him that he was wrong, and occasionally he convinced me that I was wrong.

Q. How did you place the order; what was the method?

A. I would either call the representatives of the furnace companies together, or communicate with them by telephone, or see them personally. It was done in that way sometimes. I would tell them I could sell a certain quantity of iron at a certain price, and they would sometimes take their share of it, take a portion of it, and sometimes some of them would not be satisfied with the price.

Q. Was it a frequent thing for some of them to refuse to participate because of the price?

A. Quite frequently, yes.

Q. Generally, was there some one or more of them who would not go in?

A. Usually one or two who would not be satisfied, or thought, perhaps, that they were not in a condition to make delivery.

Q. And they would stay out?

A. Yes.

Q. And there would be different ones at different times who would not go in?

A. Yes; according to their stock on hand and their other orders, perhaps.

Q. And in that way you finally made up the quota, and then with whom did Mr. Dinkey deal? Did he deal with you and the association, or with the individuals?

A. With the individuals.

Q. And you would give him their names?

A. The contracts were made out, and I had nothing to do with it then, after the sale was made.

Q. That is, you furnished Mr. Dinkey the names of the concerns who would fill the order, and the amounts each one would fill?

A. And the contracts were made direct between each company and the Carnegie Steel Company.

Q. And this matter of filling up the quota you attended to?

A. Yes.

Q. Did you get any pay for it?

A. Yes, I got a little pay, but not very much. The pay, though, was more to keep up the organization, the statistical end of it. We had to have a stenographer and other people, and that took about all—in fact, all we got out of it.

Q. Your pay was not for this specific work?

A. No, sir.

Q. Was about the same course pursued with Jones & Laughlin and others?

A. Precisely the same.

Q. Precisely the same method was pursued?

A. Yes, sir.

Q. Their orders also, I suppose, were larger than one furnace could supply?

A. Yes.

Q. And that was the reason for doing it in the way you have mentioned?

A. Certainly.

Q. I suppose it was a convenient way of handling their orders?

A. Yes, sir.

Q. Did the Steel Corporation ever offer you any more than the market price?

A. Never. I do not remember if they ever did. It was not the Steel Corporation; it would be the subsidiary companies—the Carnegie or the National Tube, or sometimes we would ship iron to Chicago, to the Illinois Steel Company.

Q. When I use the term "Steel Corporation," I mean any of its subsidiaries. Did they ever pay, on any purchase of pig iron, anything more than the market price?

A. Never.

Q. And in every case it was a matter of close bargaining?

A. Always.

Q. At arm's length?

A. Each fellow did the best he could for the people he represented.

Q. And you got, I suppose, a little the better of it at times?

A. I would not want to say that.

Q. You tried to?

A. Yes, I did.

Q. I will ask you whether or not any subsidiary of the Steel Corporation was a member of these ore associations or the Bessemer association, or any other of the associations you have named. I do not recall that you have mentioned any—

A. The only associations I have named are the Bessemer association and the ore association.

Q. Were they members of either?

A. Neither; no, sir.

Q. Was there any price agreement made at any of these

meetings that you have testified about, leaving out of consideration now who attended them?

A. No, sir.

RE-DIRECT EXAMINATION,

By Mr. Dickinson:

Q. What do you mean by "price agreements," Mr. Butler?

A. Agreed prices.

Q. Do you mean a formal agreement by which the parties entered into a contract with each other?

A. I do not know that I catch your meaning.

Q. You know what a contract is, where parties mutually obligate themselves to one another?

A. Yes, sir.

Q. And an agreement may be in the nature of a contract, may it not?

A. Yes.

Q. Did you have any understandings with each other about prices?

A. Only in the way I have explained previously, that if I had an opportunity to sell iron and distribute it—

Q. No, no; I mean in these association meetings where prices were discussed, I understand Mr. Lindabury to be asking you about. I ask you whether before you separated at those meetings you had any understanding as to what the price would be?

A. No, sir.

Q. Were prices announced following these meetings, announced in the public prints?

A. They may have been.

Q. I will ask you, from your knowledge, whether they were or were not generally announced.

A. I think the newspapers usually made some announcements.

Q. Following those meetings?

A. Yes, sir.

Q. You were asked about the capacity of any single furnace, and its ability to furnish an order varying from 50,000

to 400,000 tons. Within what time were those deliveries to be made, within what time would they have to be made, ordinarily?

A. That depended on the needs of the purchaser. Sometimes they would want a quantity of iron delivered immediately, and then again they would want it covering a period of time.

Q. How long a period?

A. I have made sales covering a period of two or three months.

Q. Did you have any furnaces there in the Shenango or Mahoning Valley that could have filled an order of 50,000 tons to be delivered within three months?

A. They might have been able to, but they might not want to. That would be a very large order for any one furnace.

Q. But I am asking now as to their capacity and not as to their desire.

A. No, not within two or three months.

Q. What was the largest capacity furnace there?

A. The largest capacity furnace is 100,000 tons.

Q. Are you speaking of a single furnace or a single operator?

A. A single furnace.

Q. But some of them have more than one furnace, have they not?

A. Well, the Andrews & Hitchcock Iron Company have, but the furnaces make different qualities, and I am speaking now of steel-making iron.

Q. Are Andrews & Hitchcock the largest there?

A. No, sir.

Q. Which is the largest?

A. Brier Hill. Our product was basic and Bessemer, what is known as steel-making irons. Many of these furnaces made foundry iron, and the Bessemer Association did not have anything to do with that at all.

Q. Were these orders from the Corporation for steel-making iron?

A. They were for steel-making iron exclusively.

Q. What is the capacity of your furnace?

A. One hundred thousand tons.

Q. One hundred thousand tons a year?

A. One hundred thousand tons a year; that is the minimum. We might make a little more, but that is about it.

Q. What was the capacity of Hanna & Company's furnaces a year?

A. I think about 80,000 or 85,000.

Q. Yours was the largest within that whole territory, was it?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Lindabury:

Q. I observe that your name is down as an attendant at the so-called Gary dinners. Did you attend any of them?

A. I attended all of them; I never missed a dinner.

Q. There is a published speech of yours in one of these pamphlets giving the proceedings and the speeches made at one of those dinners. Did you make any speeches at those dinners?

A. I did not call them speeches. I just talked.

Q. Well, you made talks?

A. Yes.

Q. Was there any agreement or understanding, express or implied, reached or entered into at any of those dinners on the subject of prices, by which they were to be increased, decreased or maintained?

Mr. Dickinson: I object to that, because it calls for a conclusion of the witness, whereas, he should be called upon to state what was said by all parties who said anything at the dinner. Therefore it is incompetent.

By Mr. Lindabury:

Q. You may answer the question and then follow the Judge's suggestion and tell what was said at each of those meetings, so far as you are able to do so.

A. I would answer no.

Q. There was not?

A. No.

Q. What was the character of those meetings, and what was done and said at those meetings?

A. There was a whole lot said. There was not very much done.

Q. Tell what was said.

MR. DICKINSON: If you go into that, the witness will not be able to get away in time to catch his train.

MR. LINDABURY: Well, no matter, then. It was your objection——

THE WITNESS: I was going to say that it is all a matter of record. We made a record of it there.

MR. DICKINSON: Of course I do not object to your going into it.

MR. LINDABURY: I am content to stop there, if you are.

By MR. DICKINSON:

Q. I want to ask one other question. You stated it was all taken down in the record?

A. I think every Gary dinner was published.

Q. Do you know that a record was made of every meeting——

A. (Interrupting). I mean the talks, and what Judge Gary said, and what the others said. I think there was a stenographer present usually, and the proceedings were published, either in pamphlet form or some specific form.

Q. Do you know whether any record was made of the first Gary dinner?

A. I cannot answer as to that.

Q. You were only referring to these pamphlets that have been printed?

A. Yes, sir.

Q. And that is what you mean when you say records were made?

A. Yes, sir.

MR. DICKINSON: That is all.

MR. LINDABURY: That is all.

(Whereupon, at 12:50 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

C. D. MARSHALL,

a witness heretofore duly sworn on behalf of the United States, was recalled and testified further as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Mr. Marshall, state whether or not, for a period prior to, say, November 1, 1911, the Harriman Lines solicited bids for such construction as comes within your line, and generally; and if you should say that they did not, how long a period would your answer cover?

A. I do not think that they have solicited inquiries for bridge work for a period of at least seven or eight years.

Q. What lines do you include in the so-called Harriman lines?

A. The Southern Pacific, the Union Pacific—I do not remember the names of some of those western roads.

Q. How about the Alton?

A. The Alton is another one.

Q. Are there any others that you can recall?

A. I would have to refresh my memory on what was included in the Harriman Lines.

Q. To what company, if any one company, has their bridge work within that period gone?

A. I think it has all gone to the American Bridge Company.

Q. Mr. Marshall, state what proportion of your material that you work up you have bought from the Carnegie Steel Company, and for how long a period you have been buying it.

A. For the last eight or ten years I think it has been about 60 to 75 per cent.

MR. DICKINSON: That is all.

CROSS EXAMINATION,

By MR. SEVERANCE:

Q. Mr. Marshall, you refer to the Alton as one of the Harriman Lines?

A. I am not sure that it is. I do not know.

Q. No. Nor are you sure that it has been continuously during this period you have mentioned?

A. No; I am not.

Q. How long ago did you say it was that they ceased asking you to bid on their work? Was it not longer ago than seven or eight years?

A. I do not recall. We were asked to bid once.

Q. Have you ever been asked to bid on any work for the Harriman Lines since the time the Union Pacific bought the stock and obtained control of the Southern Pacific?

A. Not that I can recall.

Q. That was in 1901, eleven years ago, was it not?

A. We were asked at one time by Mr. Thorne; I believe he is director of purchases. We at one time, quite a number of years ago, were asked to bid on some work; but that is as far as we ever could get.

Q. You had that one inquiry?

A. That one inquiry.

Q. So far as you recall, that is the only time since these two roads were put together?

A. Yes.

Q. Previous to the time the Union Pacific and Southern Pacific were put together, did you do work on the Union Pacific?

A. We just started in business in 1900.

Q. So that, as a matter of fact, you have never done any work on the Union Pacific?

A. Never; no, sir.

Q. Nor on the Southern Pacific?

A. No, sir.

Q. Have you done any work at all on the Alton, at any time?

A. We may have, but I do not recall it.

MR. SEVERANCE: That is all.

CHARLES E. E. CHILDERS,

a witness called by and on behalf of the United States, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. What is your place of residence, Mr. Childers?

A. Pittsburgh.

Q. What is your age?

A. 61.

Q. In what business are you engaged?

A. I am in the railroad business.

Q. What association have you with the railroad business?

A. I am joint agent of the Trunk Line Association, and I am secretary of the Pittsburgh Freight Committee.

Q. Does that association have anything to do with the question of ore rates and coal rates?

A. Not to my knowledge.

Q. Do you attend the meetings of the association?

A. Of the Trunk Line Association? Some of them. I have charge of a particular branch of the Association work.

Q. What branch?

A. The Freight Inspection Bureau here.

Q. Does that inspection cover the question of ore rates to the Lake ports?

A. No, sir; it has nothing to do with it.

Q. Do your duties bring that, at all, under your cognizance?

A. No, sir; not at all.

Q. State whether or not you were at any time secretary of the Western Pennsylvania and Eastern Ohio Railway Traffic Association.

A. I was.

Q. During what period?

A. I ceased to be secretary in May, 1910. I am not quite sure when I began. It was about five or perhaps six years before that date.

Q. While you were secretary, did you have charge of whatever books or papers the association had?

A. Yes, sir.

Q. Have you those now?

A. No; I have not.

Q. Where are they?

A. I don't know where they are.

Q. What did you do with them?

A. I turned them over to the chief clerk of Mr. James P. Orr, the assistant freight traffic manager of the Pennsylvania Lines.

Q. When did you turn them over?

A. In May, 1910.

Q. What did you turn over?

A. All the papers I had relating—

Q. Describe them generally.

A. They were practically all, or the bulk of them, copies of statistical reports which I had compiled and distributed.

Q. Distributed to whom?

A. To the interested coal-carrying roads in this territory.

Q. On what were they based?

A. Those were figures—

Q. I say, on what were they based, those reports that you made?

A. I do not quite understand the question.

Q. You say that you made statistical reports?

A. Well, my figures were based on reports rendered to me by the agents of the individual lines, of the tonnage.

Q. State what individual lines rendered such reports to you.

A. All the coal-carrying roads operating in the Pittsburgh, Western Pennsylvania and Eastern Ohio districts.

Q. Please name them.

A. There were the Pennsylvania Lines west of Pittsburgh; the New York Central Lines in this district; the Erie Railroad; the Baltimore & Ohio and the Bessemer & Lake Erie.

Q. Did you or not send to these several companies that rendered you reports these statistical statements based upon the reports sent in by all of them?

A. Yes.

Q. They were sent to each of those you named?

A. Yes, sir.

Q. What other papers did you turn over besides these statistical reports?

A. There were, as far as I can recollect, miscellaneous correspondence, not amounting to very much, in regard to these reports, and a few sets of printed minutes, which I happened to have, of meetings held by the interested coal-carrying roads; but not of the Western Pennsylvania and Eastern Ohio Railway Traffic Association.

Q. What period did they cover?

A. I think they covered the period probably from about —I am only speaking from recollection, you know.

Q. Oh, yes.

A. Perhaps the year 1900 to 1910. That is the period of my tenure as secretary, and that of my predecessor.

Q. What did these papers amount to in bulk, that you turned over?

A. The whole?

Q. Yes. In what form did you turn them over?

A. They were book files, for instance, of our statistical reports.

Q. How many books of those were there?

A. Probably eight or ten.

Q. Of what size were they?

A. Different sizes. I remember there was one large size monthly report, in a good deal of detail; and then there were smaller ones.

Q. What else beside those?

A. Then, as I say, there were bundles of correspondence, letters; tissue copies of my letters, and the originals of letters that I received; and these printed minutes.

Q. Were they in volumes?

A. The minutes?

Q. Yes.

A. No. We never bound them. They were simply gathered together by me in a stiff cover, with a clip.

Q. What was the bulk of them?

A. Six inches by three inches, I suppose. I am a poor guesser as to such things.

Q. Three inches thick?

A. No; that is the width. I did not describe the thickness. You are speaking of the minutes?

Q. I am speaking of the minutes. Suppose they were in a volume all together; about how many pages would there be?

A. Possibly 60.

Q. 60 pages?

A. Yes.

Q. Were they arranged according to consecutive dates?

A. Yes. That is based upon there being one issue of minutes each year, and each issue containing, roughly speaking, ten pages. That makes 60 pages altogether.

Q. How often did you issue these statistical reports?

A. From month to month; and then once a year, too, we had an annual report.

Q. Did you send out copies of these minutes of the meetings?

A. Yes.

Q. To the companies you have named?

A. Yes.

MR. DICKINSON: That is all.

CROSS EXAMINATION,

By MR. REED:

Q. Mr. Childers, in these statistical reports did you give the figures of ore shipments?

A. No.

MR. COLTON: I offer in evidence two contracts, dated July 30, 1904, between the Republic Iron & Steel Company, of Chicago, Illinois, and the Pittsburgh Steel Company, of Pittsburgh, Pennsylvania.

MR. LINDABURY: We accept the assurance of the Government counsel that these were executed and delivered, and we have no objection on that point, but we object to them on the ground that they are irrelevant and immaterial to the issues in this case.

MR. COLTON: I ask also that the originals may be withdrawn after they have been copied from the record.

MR. LINDABURY: Yes. That is understood as to all of them.

(The papers so offered and identified were thereupon marked Government Exhibit No. 159 and Government Exhibit No. 160, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. COLTON: I also offer in evidence contract of March 22, 1905, between the Republic Iron & Steel Company and the Pittsburgh Steel Company.

MR. LINDABURY: I should like to know from Government's counsel upon what theory as to relevancy this and the two preceding contracts are offered.

MR. COLTON: The Government proposes to connect these contracts with certain other contracts that have been in evidence, and it does not desire to make more specific its purpose, because it is unnecessary to apprise the other side of what it proposes to prove, and it might be a disadvantage to the Government in securing and completing its proof.

MR. LINDABURY: I think the defendants are entitled to know upon what theory, or in support of what issue the offer is made, and we insist upon an answer on that point. I understand the rule is that whenever any documents are offered in evidence counsel on the other side are entitled to know upon what theory or in support of what point the offer is made, so

that they are not taken by surprise, but are prepared to meet it.

MR. COLTON: I think the order of proof is always in the discretion of the Court, and the Court not being here, you can move to strike out on the ground that the order of proof was not proper. That would be a motion to take up before the Court in Philadelphia.

MR. LINDABURY: It is not a question of the order of proof, but it is a question of informing us upon what theory it is offered, to support what point, and we are all the more entitled to it if it is to be made competent by some proof undisclosed, to be offered at some later time.

MR. COLTON: The Government does not agree with counsel for the defendants, but that is something that can be taken up with the Court.

MR. LINDABURY: I object to the admission of the paper on the ground that it is incompetent, irrelevant and immaterial.

MR. DICKINSON: You agree that these were executed, do you not?

MR. LINDABURY: I agree with respect to this as I did with respect to the other two, upon the statement of Government's counsel that they were executed and delivered, and I waive the production of evidence in relation thereto.

(The contract so identified was offered in evidence and marked "Government Exhibit No. 161, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. COLTON: I offer in evidence the contract of date July 1st, 1903, between the Carnegie Steel Company and the Pittsburgh Steel Company.

MR. LINDABURY: I admit the execution and delivery of this contract, but object to its admission in evidence upon the ground that it is irrelevant and immaterial.

(The contract so identified was offered in evidence and marked "Government Exhibit No. 162, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. COLTON: I offer in evidence a contract dated October 11, 1904, between the Carnegie Company and the Pittsburgh Steel Company.

MR. LINDABURY: I make the same admission and take the same objection as to the last one.

(The contract so identified was offered in evidence and marked "Government Exhibit No. 163, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. COLTON: I offer in evidence contract dated March 17, 1905, between the Carnegie Steel Company and the Pittsburgh Steel Company, together with the endorsement of cancellation dated June 28, 1905, written across the face thereof.

MR. LINDABURY: I make the same admission and take the same objection as to the last.

(The contract so identified was offered in evidence and marked "Government Exhibit No. 164, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LINDABURY: It is agreed on behalf of the defendants that counsel for the Government may withdraw these originals and substitute copies, and that they may return the originals to the owners, upon a promise that they will turn them over if they are required by either side.

WILLIS L. KING,

a witness heretofore duly sworn on behalf of the United States, was recalled and testified further, as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. You have been hitherto questioned in regard to your attending so-called Gary dinners and luncheons?

A. Yes, sir.

Q. I want to ask you whether or not you attended any meetings which took place preceding either said luncheons or said dinners on the day upon which they occurred, or at any time immediately antecedent.

A. Not preceding the first dinner, in 1907, but you will remember, probably, that the records show that committees were appointed at that first dinner covering various lines of steel products, and those committees did call meetings, and I

attended some of them. In fact I was chairman of one committee, and I called several meetings, I don't remember how many.

Q. The particular inquiry is whether or not on the day of the dinner, or luncheon, either those committees, or those who represented the large iron interests, had a day meeting preceding the luncheon?

A. I think that was a fact. Most of us were in New York there to attend the meeting, and it was only natural that we should have a preliminary talk, I think, about conditions.

Q. Where did those preliminary talks or meetings take place?

A. I think at the Railroad Club, some of them.

Q. At some room in the club?

A. Yes.

Q. When would these sessions begin, at what time of the day?

A. Generally about lunch time.

Q. Did you get together before lunch time?

A. No, I think not.

Q. How long did those sessions last?

A. Probably a couple of hours or longer. Lunch took a part of the time.

Q. Mr. King, I will ask you whether or not at or about the time of the dinner held in the early part of February, 1908, the manufacturers attending that dinner were in session for a period of two days.

A. I was not there, Judge. You ask about February, 1908?

Q. Yes.

A. My recollection is that that was the first dinner after the initial dinner. Certainly there was not any extended session like that.

Q. Nothing like two days?

A. Oh, no.

Q. Well, was there one that extended the greater part of the business hours of one day?

A. I have no recollection of attending any of those meetings that did not begin about lunch time, and they were finished in the early afternoon.

Q. At the meetings that you recollect were there any persons present except the members of these various committees?

A. I rather think not. I do not like to state that positively. They were meetings of the principal manufacturers of steel, and some of them might not have happened to have been on the committee.

Q. Do you know whether or not, in February, 1908, and preceding the dinner of that month, there was a meeting of steel manufacturers, other than the committee meetings?

A. Not a general meeting of steel manufacturers, if that is what you mean, Judge. Probably we are working a little at cross-purposes. This general committee that was appointed at the first so-called Gary dinner, consisting of five members, appointed in turn, a number of sub-committees connected with the various kinds of products made. Those sub-committees met at times; I do not know where or when. I think the meetings that I attended were mostly in Pittsburgh here.

Q. I am not asking about those, because we have already questioned you about that. What I am questioning you about is whether or not there was any meeting of the steel manufacturers preceding the dinner of February, 1908, which was quite an extended meeting.

A. I have no recollection of attending any meetings, preceding any of those dinners, that did not take place in business hours and usually about lunch time, and lasted a few hours. There may have been more steel manufacturers there than actually were represented on this committee. I am not sure about that. I think probably there were.

Q. Were those the sessions of the general committee that you were referring to, at which others may have attended?

A. I think so. That is my recollection.

Q. Were the members of any of the sub-committees at those meetings?

A. I think so.

Q. The chairmen?

A. The chairmen of the sub-committees were mostly members of the general committee.

Q. You had five on your general committee?

A. They were, generally speaking, chairmen of the sub-committees.

Q. Mr. King, did you yourself always attend the meetings of the Steel Bar Committee, or did Mr. Roland Gerry sometimes attend?

A. If anybody attended, I did. Mr. Gerry is not in that department of our business.

Q. In what department is he?

A. He is in the cold rolled shafting department.

Q. Did he attend any committees?

A. He attended any meetings there may have been of the cold rolled shafting association. You are not asking me about that now, as I understand. You spoke of the Steel Bar Committee.

Q. No; I am not asking about that.

A. I attended any meetings of the Steel Bar Committee.

Q. Did Mr. Gerry attend any meetings of these committees?

A. No, sir.

Q. How about structural material? Did he attend any of those meetings?

A. No, sir; he would not attend those.

Q. How about billets?

A. No, sir.

Q. Or the sheet bar sub-committee?

A. No, sir.

Q. Will you say that he did not attend those meetings, or that you do not recollect whether he did or not?

A. I feel very sure he would not attend any of the meetings except for the department of the business that he was directly connected with, which was cold rolled shafting.

Q. Mr. King, I am going to read you an extract from the Iron Trade Review, December 26, 1907, page 1028, and ask

you whether any such notice as this was sent out, to your knowledge; whether you recognize it.

MR. SEVERANCE: I object to counsel reading from an article in the Iron Trade Review to this witness, on the ground that any such question would be leading and irrelevant, that the witness's recollection cannot be refreshed by such means, under any rule of law; that if counsel desires to show by this witness what transpired at any meeting, he should ask the witness, and not tell him what some newspaper has stated about it, and ask him to assent or dissent from that.

MR. DICKINSON: This purports to be a notice sent out to the sub-committees, and Mr. King has stated that he was a member of the general committee. I want to bring this to his attention and ask whether he knows that a communication in substance like this was sent out by Judge Gary with his knowledge as a member of that committee. Now I will read it:

"In the appointment of sub-committees, the members of the general committee have used their best judgment in distributing responsibility amongst the different lines of business, confining the membership to as small a number as seems practicable. It is hoped everyone who has been appointed will cheerfully serve, and will attend and participate in the considerations of the respective committees, whenever called together by the chairman. It seems desirous that the committees meet in the near future, and as frequently as the interests of the trade may demand. While it is advisable that no agreements contrary to the law be entered into, there is no objection to frequent consultations for the purpose of receiving full information, and for the frank interchange of opinions concerning the business interests of all. The general committee will be pleased to receive information or give advice at any time concerning any subject which may be brought before the committee. The attitude and dispositions of the iron and steel makers of the country, it is believed, meets with the general approval of the public. It is hoped to meet again for dinner and social intercourse some time in the near future, perhaps early in February."

MR. SEVERANCE: What is the question?

(The stenographer repeated the question as follows:)

"By MR. DICKINSON:

"Q. Mr. King, I am going to read you an extract from the Iron Trade Review, December 26, 1907, page 1028, and ask you whether or not any such notice as this was sent out, to your knowledge; whether you recognize it."

MR. SEVERANCE: I make the additional objection that the question as framed asks for a conclusion.

MR. DICKINSON: I will alter the question to read: "A notice in substance like that."

MR. SEVERANCE: The witness is asked to testify of his own recollection.

By MR. DICKINSON:

Q. Now, just answer, will you please?

A. My recollection of the proceedings—

MR. SEVERANCE: I object. That is not the question, as to what the proceedings were. You did not notice the question, Mr. King. He asked you whether you remember that that notice was sent out. It is no disgrace not to remember.

THE WITNESS: I do not. I do not remember any such notice as that.

MR. SEVERANCE: That is responsive.

By MR. DICKINSON:

Q. Did your committee have anything to do with approving any notice that was sent out?

A. The general committee, at their first meeting, after the first dinner—the date of which I do not remember, but which probably was within a short time—selected the chairmen of these sub-committees, and the chairmen of those sub-committees asked certain manufacturers making material covered by that particular committee to meet with the chairman of the sub-committee at some time in the future; and that was done.

MR. SEVERANCE: That has nothing to do with what he has asked you.

THE WITNESS: Then I do not understand the question.

MR. SEVERANCE: I do not think you understand his question.

MR. DICKINSON: I will keep on asking until he surely will.

By MR. DICKINSON:

Q. Did your committee authorize the sending out of a statement in substance like the one I have read?

A. Not at all.

Q. Do you know whether any such notice as that was sent out by Judge Gary?

MR. LINDABURY: That has already been answered.

MR. SEVERANCE: He has already said that he did not.

MR. DICKINSON: Let the witness answer.

THE WITNESS: I would say that no such notice was sent out with the authority of the committee.

By MR. DICKINSON:

Q. Leaving out the question of the authority of the committee, did you see any notice issued at that time that came to your notice in your business?

A. I did not.

Q. Did you keep records of matters of that sort?

A. No, sir; I did not.

Q. Did you keep a scrap book in which matters of that sort would be entered?

A. No, sir.

Q. You have no knowledge as to whether or not such notice as that was sent, as I understand you?

A. I have no knowledge.

Q. Have you any knowledge of any stenographic reports having been made of what transpired at any of the Gary dinners prior to February 18, 1909?

A. To the best of my recollection the stenographer was there and I saw at least a number of the printed proceedings of the dinner.

Q. Of what dinner?

A. Of all of them, so far as I can recollect.

Q. Have you ever seen any printed proceedings of the first dinner in 1907?

A. I do not believe I have.

Q. Have you ever seen any printed proceedings of the dinner in February, 1908?

A. I could not answer off-hand.

Q. Well, in June, 1908.

MR. SEVERANCE: What is the purpose of this?

MR. DICKINSON: If it is true, as I understood him to state, that there were reports made of all the dinners, we want to call for them.

MR. SEVERANCE: Why not ask him if he has seen them.

MR. DICKINSON: No. I am going to ask the Steel Corporation whether they have them.

MR. LINDABURY: I will state to you gentlemen that we have already furnished you every printed report of the speeches made at the dinners.

The Steel Corporation furnished to the Stanley Committee a complete printed record of the Gary dinners in so far as they were stenographically reported or printed. I know that the 1907 dinner was not stenographically reported, and that there is no print in existence of what was said at that dinner, and I think that is true also of the early dinner or dinners in 1908. All after that were stenographically reported, and the reports have been printed and were given to the Stanley Committee, and will be furnished to the Government counsel in this case on request.

THE WITNESS: To my recollection I have never seen any proceedings of that first dinner in November, 1907. I do not believe there was any stenographer there. I am not sure about the subsequent ones. I know that as to a number of them they were stenographically reported.

MR. DICKINSON: And they have been put in pamphlet form?

THE WITNESS: Yes; they have been put in pamphlet form.

MR. LINDABURY: Those were the later ones that were so reported?

THE WITNESS: Yes, sir.

ROBERT A. WALKER,

a witness called by and on behalf of the United States, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION,

By Mr. Colton:

Q. Mr. Walker, what is your present position?

A. I am the resident editor of the Iron Age, located in Pittsburgh.

Q. How long have you been with the Iron Age?

A. Twenty-seven years the first of April next year.

Q. What is the general character of the Iron Age?

A. You mean as regards the field that it covers?

Q. Yes.

A. The Iron Age is a trade journal devoted to the iron and steel and machinery trades.

Q. What duties does it perform toward the trade?

A. The Iron Age furnishes news regarding the condition of the iron and steel markets, new companies being organized, new machinery on the market, and general news of that character.

Q. How is this news prepared?

A. Our main office is in New York. We have branches, I believe, in seven or eight cities, with resident editors in each city to cover their own particular districts. We also have men traveling, gathering news in their travels.

Q. What effort is made to make the news accurate?

A. Every effort that we can possibly make.

Q. In the gathering of the news, in so far as you have gathered it during the time that you have been with the Iron Age, what was the general method that you have pursued in making sure that the news was accurate?

A. In every case where it was possible to get the news from first hands, from the parties directly interested, that was done.

Q. State whether or not it was a general rule that you did get the news at first hand.

A. Those were our instructions, yes, to do so wherever possible.

Q. In case you did not get the news first hand, what did you do?

A. Our usual custom is to hold it over for a week. If we think there is a reasonable certainty of the matter being true on a certain subject, we sometimes take a chance on its being correct. That is very, very seldom.

Q. When you take a chance on an article, do you publish it in the same manner that you would an article on which you had used proper efforts to have it verified by the responsible parties?

A. I think not. Of course that would be practically an unimportant item. In such a case we would say "it is reported," or "it is stated on good authority," or some phraseology to indicate that we are not responsible for the truth of the particular statement.

Q. And as to important items of news relating to the various branches of the iron and steel trade, it is your custom to verify them before they are published?

A. Absolutely so. I called up our New York office today about a quarter past twelve, and spent ten or twelve dollars for perhaps a four or five line item.

Q. What do you mean by "first hand?"

A. For instance, a statement was made that the Jones & Laughlin Steel Company were going to build a new blast furnace at Aliquippa. This is merely to illustrate the point. My endeavor would be to see somebody connected in an official capacity with that company, such as Mr. Jones or Mr. King, or somebody else.

Q. Does the Iron Age devote itself exclusively to the iron and steel trade?

A. The iron and steel, machinery and allied trades, such as tin plate and sheets, which come under the general heading of iron and steel.

Q. Does it deal in politics and general news?

A. No, sir; it does not.

MR. CORNEAU: Mr. Colton has some other matters to attend to, and I will introduce some of these articles.

By MR. CORNEAU:

Q. Mr. Walker, I show you a bound volume containing the Iron Age of December 17, 1896, and I call your attention to the article in the right hand column of page 1217. Can you state whether or not you wrote that article?

A. No, sir; I did not.

MR. CORNEAU: I will say, gentlemen, that the reason for that question is to give you an opportunity to cross examine with reference to some of these articles that Mr. Walker did write. We thought we would show which articles he wrote and which ones he did not.

We offer this on his preliminary qualification. We offer this article in evidence, headed "The Carnegie-Rockefeller Deal," in the issue of the Iron Age of December 17, 1896, pages 1217 and 1218.

MR. REED: That is objected to as incompetent, being hearsay; also as irrelevant and immaterial.

(The article so offered and identified was thereupon marked Government Exhibit No. 165, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence an article appearing in the Iron Age of January 7, 1897, page 25, volume 59 of these bound volumes, in the left hand column, under the title, "The Iron and Metal Trades."

By MR. CORNEAU:

Q. Look at that article and see if you wrote it, Mr. Walker.

A. No, sir; I did not write that.

MR. REED: That is objected to as incompetent, being hearsay; also as irrelevant and immaterial.

(The article so offered and identified was thereupon marked Government Exhibit No. 166, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence an article from the Iron Age of June 24, 1897, page 22, in the left hand column, under the heading "The Iron and Metal Trades."

MR. REED: That is objected to as incompetent, being hearsay; also as irrelevant and immaterial.

(The article so offered and identified was thereupon marked Government Exhibit No. 167, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence an article from the Iron Age of October 19, 1899, appearing in the right hand column on page 17, under the heading "Union Steel Company."

MR. REED: That is objected to as incompetent, being hearsay; also as irrelevant and immaterial.

(The article so offered and identified was thereupon marked Government Exhibit No. 168, October 30, 1912, and will be found in the Volume of Exhibits.)

By MR. CORNEAU:

Q. Can you state whether or not you wrote that article?

A. To the best of my knowledge, I did; yes, sir.

MR. REED: It is further objected to as not the best evidence of the witness's knowledge of that subject.

By MR. CORNEAU:

Q. Can you tell us how you got the information upon which you based that article?

A. I could not, at this late date; no, sir.

Q. Will you state whether or not, in a general way, it was obtained in the manner you have described already?

A. I would think so; yes, sir.

MR. CORNEAU: We also offer in evidence that part of an article appearing in the Iron Age of January 4, 1900, page 21, headed the Pittsburgh Iron Trade in 1899, by Robert A. Walker, Pittsburgh, Pennsylvania, which appears under the caption "Consolidations," beginning with such caption and ending before the caption, "Foreign Trade," at page 22.

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 169, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By Mr. Corneau:

Q. I show you that article and ask you if you wrote it?

A. To the best of my knowledge, yes.

Q. Will you tell us in a general way on what information that article was based. It seems to be general in its nature and something of a review.

Mr. Reed: Objected to as incompetent.

A. The article was a general review of the Iron Trade in Pittsburgh in 1899, the conditions of the trade during that year, the prices ruling and anything else pertaining to the condition of the iron trade in that particular year, 1899.

By Mr. Corneau:

Q. And based on what? That is, in reference to the time of getting your information, and so on.

A. Based on happenings during the year, such as consolidations and anything else that may have occurred.

Q. Were you or not during the year familiar with those events which you have referred to, and which you speak of in the article?

A. Yes, I was.

By Mr. Reed:

Q. Your familiarity with the matters and incidents mentioned in the article came through the communications from other men, did they not?

A. Yes.

Q. Instead of participation in those incidents yourself?

A. You mean active personal participation?

Q. Yes.

A. Yes, it came through communication, usually personal communication.

Q. You did not actually participate or share in any of the incidents mentioned in the articles?

A. No, sir; I did not.

By Mr. Corneau:

Q. Will you state whether or not the matters referred to in this article were matters which were widely known in the trade at that time, among the public?

A. I think they were generally pretty well known in the particular trade they represented—the iron and steel trades.

MR. REED: It was very widespread hearsay.

By MR. CORNEAU:

Q. Perhaps it has already been covered, but I will ask you whether or not it was your business to keep yourself informed with respect to the current happenings in the trade generally?

A. As regards the Pittsburgh District, yes.

Q. And this article refers to the Pittsburgh District, as I recall it?

A. What we call the Pittsburgh District. You are referring now to the consolidations of Sharon and Union and others, are you?

Q. Yes.

A. Yes; we call that the Pittsburgh District.

MR. CORNEAU: We also offer in evidence from the Iron Age of July 26th, 1900, at page 22, left hand column, the article under the heading "The Iron and Metal Trades."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 170, October 30, 1912", and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. I will ask you if you wrote that article. In order to save time I ask generally whether you wrote these articles with such a caption as this, several of which appear here.

A. I did not write this, and I did not write these articles.

Q. So we may omit that question with reference to articles under that particular caption?

A. Yes.

MR. CORNEAU: I will also offer in evidence from the Iron Age of the same date, page 34, the article entitled "The Carnegie Steel Company going into rods."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 171, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. I will ask you if you wrote that article.

MR. REED: If you know.

MR. CORNEAU: Certainly, if he knows. Do not tell us anything you do not know.

A. I will try not to do so. To the best of my knowledge I did not write it. You might expedite matters if you will give me those pages. I will look at the articles.

MR. CORNEAU: I also offer in evidence from the Iron Age of August 2nd, 1900, page 24, article entitled "The Iron and Metal Trades."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 172, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. CORNEAU: We also offer in evidence from the Iron Age of September 20, 1900, page 17, the article entitled "Consolidations as a source of increased competition."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 173, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge I did not write it.

MR. CORNEAU: I will offer in evidence article from the Iron Age of November 1st, 1900, page 32, entitled "The Iron and Metal Trades."

MR. REED: Objected to as incompetent, being hearsay.

(The article referred to and so identified, was offered in evidence and marked "Government Exhibit No. 174, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. CORNEAU: We also offer in evidence from the Iron Age of December 13, 1900, page 7, the article entitled "Sheet Mill Machinery Agreement."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 175, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. State whether or not you wrote that article.

A. To the best of my knowledge I did write it.

Q. Can you recall in what way you obtained your information?

A. I could not at this late time, no sir.

MR. CORNEAU: We also offer in evidence, from the Iron Age of January 3, 1901, pages 32, 33 and 34, that part of the article entitled "The Pittsburgh Iron Trade in 1900," by Robert W. Walker, of Pittsburgh, appearing under the caption "New construction."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 176, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. Will you please state whether you wrote that article?

A. To the best of my knowledge I wrote it.

MR. CORNEAU: We also offer in evidence from the Iron Age of January 17, 1901, the article headed "Carnegie Plans", on page 33, right hand column.

MR. REED: Objected to as incompetent, being hearsay:

(The article so identified was offered in evidence and marked "Government Exhibit No. 177, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. Can you state whether or not you wrote that article?

A. To the best of my knowledge I did not.

MR. CORNEAU: We also offer in evidence from the Iron Age, March 28, 1901, page 38, the article under the caption, "Sharon Steel Company."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and

marked "Government Exhibit No. 178, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge I did.

MR. CORNEAU: We also offer in evidence article from the Iron Age of September 19, 1901, page 20, under the caption of "Union Steel Company."

MR. REED: Objected to as incompetent, being hearsay.

(The article so identified was offered in evidence and marked "Government Exhibit No. 179, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

By MR. CORNEAU:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge I wrote it.

Q. Can you, at this time, tell where you got your information?

A. I could not at this time, no.

MR. CORNEAU: We also offer in evidence, from the Iron Age of August 7, 1902, page 40, the article under the caption of "Sharon Steel Company."

MR. REED: That is objected to as incompetent, being hearsay.

By MR. CORNEAU:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge, I wrote it; yes, sir.

(The article so offered and identified was thereupon marked Government Exhibit No. 180, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence, from the Iron Age of October 16, 1902, page 6, the article beginning near the bottom of the right hand column on page 6 with the words "Duluth, Minnesota, October 13, 1902," and ending near the top of the left hand column on page 7.

MR. REED: That is objected to as incompetent, being hearsay.

By Mr. Reed:

Q. Did you write that article, Mr. Walker?

A. I did not.

(The article so offered and identified was thereupon marked Government Exhibit No. 181, October 30, 1912, and will be found in the Volume of Exhibits.)

Mr. Corneau: We also offer in evidence the article from the Iron Age of November 27, 1902, pages 26 and 27, under the heading "The Union-Sharon Steel Companies Merger."

Mr. Reed: That is objected to as incompetent, being hearsay.

By Mr. Corneau:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge, I did not.

(The article so offered and identified was thereupon marked Government Exhibit No. 182, October 30, 1912, and will be found in the Volume of Exhibits.)

Mr. Corneau: We also offer in evidence, from the Iron Age of December 11, 1902, page 49, the article under the heading "A New Rail Mill."

Mr. Reed: That is objected to as incompetent, being hearsay.

By Mr. Corneau:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge, I wrote it.

Q. Can you recall, at this time, how you got the information on which it is based?

A. I could not, at this late time.

(The article so offered and identified was thereupon marked Government Exhibit No. 183, October 30, 1912, and will be found in the Volume of Exhibits.)

Mr. Corneau: We also offer in evidence the first paragraph of an article from the Iron Age of December 25, 1902, page 28, under the title "Worcester Manufactory News" and sub-title "The Absorption of the Union Steel Company."

MR. REED: That is objected to as incompetent, being hearsay.

By MR. CORNEAU:

Q. Did you write that article?

A. I did not.

(The article so offered and identified was thereupon marked Government Exhibit No. 184, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence, from the Iron Age of February 12, 1903, page 21, the article under the heading of "Lake Superior Ore Mines."

MR. REED: That is objected to as incompetent, being hearsay.

(The article so offered and identified was thereupon marked Government Exhibit No. 185, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence from the Iron Age of August 20, 1903, page 18, the article under the heading of "The Steel Corporation's Recent Ore Land Purchase."

MR. REED: That is objected to as incompetent, being hearsay.

(The article so offered and identified was thereupon marked Government Exhibit No. 186, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence from the Iron Age of March 3, 1904, page 35, the article under the heading "The Iron and Metal Trades."

MR. REED: That is objected to as incompetent, being hearsay.

(The article so offered and identified was thereupon marked Government Exhibit No. 187, October 30, 1912, and will be found in the Volume of Exhibits.)

MR. CORNEAU: We also offer in evidence, from the Iron Age of January 6, 1910, page 28, that part of the article headed "Pittsburgh Iron Trade in 1909," by Robert A. Walker, preceding the caption "New Construction."

MR. REED: That is objected to as incompetent, being hearsay.

(The article so offered and identified was thereupon marked Government Exhibit No. 188, October 30, 1912, and will be found in the Volume of Exhibits.)

By Mr. Corneau:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge, I wrote it.

Mr. Corneau: We also offer in evidence from the Iron Age of January 30, 1908, page 375, that part of an article under the heading "Pittsburgh," commencing with the words "Park Building, January 29, 1908," which precedes the paragraph beginning with the caption "Steel."

Mr. Reed: That is objected to as incompetent, being hearsay.

By Mr. Corneau:

Q. Do you know whether or not you wrote that article?

A. To the best of my knowledge, I wrote it.

(The article so offered and identified was thereupon marked Government Exhibit No. 189, October 30, 1912, and will be found in the Volume of Exhibits.)

Mr. Corneau: We also offer in evidence, from the Iron Age of November 12, 1903, page 41, the first two paragraphs of an article appearing under the heading "Iron and Metal Trades."

Mr. Reed: That is objected to as incompetent, being hearsay.

(The article so offered and identified was thereupon marked Government Exhibit No. 190, October 30, 1912, and will be found in the Volume of Exhibits.)

Mr. Corneau: We would like to have it understood that the originals of these can be withdrawn.

Mr. Reed: That is understood.

Mr. Corneau: That is all.

CROSS EXAMINATION.

By Mr. Reed:

Q. Were the men who wrote these articles under oath to tell the truth?

A. Were the men who wrote the articles under oath to tell the truth?

Q. Yes.

A. No, sir.

Q. Were they sworn to tell the whole truth?

A. Not to my knowledge; no, sir.

Q. Were they sworn to tell nothing but the truth?

A. Not to my knowledge.

Q. Since 1896, Mr. Walker, did the Iron Age ever find that any of its writers were careless or inaccurate or untruthful or prone to jump at conclusions?

A. Not to my knowledge. We do not conduct the Iron Age along those lines.

Q. And you have never found that any of the staff was open to any of those objections?

A. Not willingly; no, sir.

Q. And you have not had a careless man in your employ, for even a short time, since 1896?

A. I can not answer that question. I am located here and our main office is in New York.

Q. Then you can not vouch for the unfailing accuracy of the men in the other offices?

A. Only from the general instructions, in fact, the explicit instructions that are given me in the search for news. I would presume that those instructions apply to every man on the writing force.

Q. But now and then you find a man who is not altogether satisfactory on the writing force, do you not?

A. Unsatisfactory in what way?

Q. From the standpoint of accuracy.

A. I have never known a man to be discharged from the company for that reason.

Q. You never have?

A. No, sir.

Q. Since 1896 have any of these reliable writers made mistakes?

A. We are all prone to make mistakes. I would judge they have; yes, sir.

Q. They are no more than human. They make mistakes, like the rest of us?

A. Like the rest of us; yes, sir.

(The witness was thereupon excused.)

MR. LINDABURY: Counsel for the Government having called our attention to the fact that the statements from 1900 to 1904 offered in evidence on pages 1419 and 1420 of the printed record have not been printed, counsel for the defendants consent that they may now be printed as if offered at this time, and marked as Government Exhibits Nos. 191 to 195, both inclusive.

(The tables referred to were thereupon marked Government Exhibits 191, 192, 193, 194 and 195, and will be found in the volume of Exhibits.)

MR. DICKINSON: It is agreed by counsel that the charts referred to in Volume 1, page 381, marked Government Exhibits Nos. 68-a, 68-b, 68-c and 68-d, May 10, 1912, being charts from the Iron Age, need not be printed unless called for by either side.

MR. DICKINSON: Petitioner offers in evidence copy of a contract between the Federal Steel Company and J. P. Morgan & Company acting in behalf of a syndicate, and it is agreed on the part of defendants represented by Lindabury, Depue and Faulks as solicitors, that this copy shall be received as if it were the original executed contract, but shall be subject to correction and to objection on the ground of irrelevancy or immateriality.

MR. LINDABURY: Defendants object on both grounds.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 196, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. DICKINSON: The petitioner presents two pamphlets, one entitled "United States Steel Corporation, Final Settlement with Syndicate Managers, January-February, 1902," and the other "Preliminary Report to Stockholders, United States Steel Corporation, to be submitted at the first annual meeting, 17th of February, 1902," and gives notice that it will rely on as evidence the following parts of the first pamphlet, to wit: The part beginning with page 1, commencing

with the words "United States Steel Corporation," down to and including the ninth line from the bottom of page 2. Also page 5, commencing with the words "Report of the Finance Committees," and extending through the words "see post pp. 11-14" on page 7, together with the note at the bottom of page 7, beginning with the words "the execution" and ending with the words "Richard Trimble, Secretary," and also pages 11 to 14, inclusive; and of the pamphlet entitled "Preliminary Report, etc.," it will rely on as evidence the part beginning on page 13 with the words "organization and issue of stocks and bonds," and extending through the words "executed between the corporation and the syndicate managers" on page 17.

(The excerpts so identified were offered in evidence and marked "Government Exhibit No. 197, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

Mr. Lindabury: It is agreed on the part of the defendants represented by Lindabury, Depue and Faulks as solicitors that there may be omitted in printing from said pamphlets the following: The part beginning with the words "Mr. Steele thereupon offered the following resolution," near the bottom of page 2, to the end of page 4. Also the second paragraph on page 7, beginning with the words "The Chairman called attention," and the remainder of that page and all of pages 8, 9 and 10 may also be omitted. Also the by-laws of the United States Steel Corporation as amended to January 7, 1902, and the minutes of the first annual meeting of the stockholders, February 17, 1902.

It is agreed on the part of the defendants represented by Lindabury, Depue and Faulks as solicitors that both pamphlets were issued by authority of the United States Steel Corporation, but the offer of portions of said pamphlets is objected to because the whole is not offered and because such parts are irrelevant and immaterial.

Mr. Dickinson: Petitioner offers in evidence a copy of a contract of March 1, 1901, executed between the United States Steel Corporation and J. P. Morgan & Company.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 198, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LINDABURY: It is agreed on behalf of the defendants represented by Lindabury, Depue and Faulks as solicitors that this contract was executed and that this copy shall be received as if it were the original executed contract, but shall be subject to correction.

MR. DICKINSON: Petitioner also offers in evidence copy of agreement of April 1, 1901, between the United States Steel Corporation and J. P. Morgan & Company.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 199, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LINDABURY: It is agreed on the part of the defendants represented by Lindabury, Depue and Faulks that this copy shall be received as if it were the original executed contract, but shall be subject to correction.

MR. DICKINSON: Petitioner also offers in evidence agreement of December 15, 1902, between the United States Steel Corporation and A. W. Mellon, R. B. Mellon and others, together with documents referred to therein.

(The papers so identified were offered in evidence and marked "Government Exhibit No. 200, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LINDABURY: It is agreed in behalf of the defendants represented by Lindabury, Depue and Faulks that this copy shall be received as if it were the original executed contract, but shall be subject to correction.

MR. DICKINSON: The petitioner also offers in evidence copy of letter of December 14, 1909, from D. G. Kerr to W. E. Corey.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 201, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LINDABURY: It is agreed in behalf of the defendants represented by Lindabury, Depue and Faulks that this copy shall be received as if it were the original, but shall be subject

to correction, and to objection on the ground of irrelevancy or immateriality; and objection is made on both grounds.

Mr. Dickinson: Petitioner also offers in evidence the agreement of February 4, 1901, between syndicate managers composed of Louis Fitzgerald, George J. Gould, et al. and the Union Railroad Company, and the Carnegie Steel Company.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 202, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

Mr. Lindabury: It is agreed in behalf of the defendants represented by Lindabury, Depue and Faulks that this copy shall be received as if it were the original executed agreement but shall be subject to correction and to objection on the ground of irrelevancy or immateriality; and objection is made on both grounds.

Mr. Dickinson: Petitioner also offers in evidence the memorandum of agreement made April 30, 1904, between the Carnegie Steel Company and the Crucible Steel Company.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 203, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

Mr. Lindabury: It is agreed on behalf of the defendants represented by Lindabury, Depue and Faulks that this copy shall be received as if it were the original executed agreement, but shall be subject to correction and to objection on the ground of irrelevancy or immateriality; and objection is made on both grounds.

Mr. Dickinson: The petitioner offers in evidence a statement furnished petitioner by the United States Steel Corporation showing the developed iron ore mines owned by subsidiary companies of said corporation on December 21, 1910, in the Lake Superior ore region.

(The statement so identified was offered in evidence and marked "Government Exhibit No. 204, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

Mr. Dickinson: Petitioner also offers in evidence a statement furnished to it by the United States Steel Corporation showing average invoice and average f. o. b. mill prices received by subsidiary companies of the United States Steel

Corporation on classes of steel products as shipped by them in the export trade during the calendar years 1906 to 1910, inclusive.

(The statement so identified was offered in evidence and marked "Government Exhibit No. 205, October 30, 1912," and a copy thereof will be found in the book of exhibits.)

MR. LEXOMBURY: Objected to as irrelevant and immaterial.

(Whereupon the further hearing of this case was adjourned subject to notice.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916. 1917 1919

No. 4[redacted] 1[redacted]6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 7.

PLAINTIFF'S TESTIMONY.

FILED MAY 12, 1916.

(25292)

VOLUME VII.

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THIRTY-SECOND DAY.

COMMERCE COURT ROOM, SOUTHERN BUILDING,
WASHINGTON, D. C.,

November 19, 1912.

The hearing was resumed at 10:30 o'clock a. m., before SPECIAL EXAMINER JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON, MR. COLTON and MR. CORNEAU.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE and MR. REED.

AGREEMENT BY COUNSEL.

It is agreed by counsel that the record shall show, that as to all testimony taken and to be taken in this cause, the requirement that the same shall be read over to the witnesses by the Special Examiner, and that the same shall be signed by the witnesses, is waived, and that the testimony shall be reported with the same effect as if these requirements had been complied with.

FRANCIS WALKER

was called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. What is your age, Dr. Walker?

A. 41; nearly 42.

Q. Where do you reside?

A. Washington, District of Columbia.

Q. In what are you engaged?

A. I am Deputy Commissioner of Corporations.

Q. How long have you been Deputy Commissioner of Corporations?

A. A few months; since the end of August.

Q. How long have you been employed in the Bureau of Corporations?

A. Over eight years.

Q. In what various capacities?

A. Prior to my appointment as Deputy Commissioner, I was Special Examiner.

Q. What were the duties of the Special Examiner?

A. The duties of Special Examiners varied. Some were in charge of the investigations made by the Bureau of Corporations. Others assisted in various capacities.

As Special Examiner, my duties were, first to have charge of the conduct of principal parts of investigations, and certain investigations were entrusted to me in general charge.

Q. State whether or not you had any part in the investigation of the United States Steel Corporation and its subsidiary companies.

A. I had a considerable part in that investigation, particularly in respect of the investigation of the prices of iron and steel products, and the costs thereof.

Q. Did you have any part in preparing or assisting in preparing the report that was made in respect to that investigation?

A. I had a considerable part in the preparation of both the reports which have been issued by the Bureau of Corporations on the steel industry.

Q. Doctor, please begin and state what your education, experience and preparation for that character of work have been. State at what institutions you were educated, and what various occupations you had before you went with the Bureau of Corporations, and what special lines of study and preparation you have pursued.

A. I am a Bachelor of Science of the Massachusetts Institute of Technology. In that institution I studied, especially, economic questions, and paid some attention to certain

branches of engineering. I had, of course, in that connection, considerable mathematical education.

Subsequent to my graduation from the Institute of Technology, I entered Columbia University as a post-graduate student in economics. My major was economics, and I devoted myself chiefly there to the study of practical ecomonic questions. I took my Doctor's degree at Columbia in 1895, being two years in residence. The third year, just prior to my receiving the degree of Doctor of Philosophy, I was engaged, for a large part of the time, in assisting the Massachusetts Board to investigate the unemployed, as a special agent of that board.

After receiving the degree of Doctor, I engaged in the teaching of economics. I taught in the Colorado College for about five years, and then about two years in the Western Reserve University at Cleveland. I resigned from that institution to go abroad, and I studied in Germany for something over a year, at various universities, namely, Munich, Vienna and Berlin. During my residence abroad, however, I was largely engaged in private study, particularly industrial combinations in Europe. I wrote various articles on such combinations, and particularly I wrote a book on the German coal combinations, which was published by the American Economic Association.

In connection with the study of the coal combinations, I paid some attention to the iron and steel combinations in Germany, and subsequently wrote on that subject. Also in connection with this work, I not only studied all available sources, but had the opportunity to visit the mines and works, and conversed, to some extent, with people who were prominent in the business there.

Returning from Europe in the latter part of 1903, I applied for a position in the Bureau of Corporations, which had been recently organized, and was appointed Special Examiner there, March 1, 1904. I have been engaged in the work of investigating combinations and trusts, so-called, in the Bureau of Corporations since that time. I have been studying the trusts, therefore, at home and abroad, for about ten years.

Q. When did the Bureau of Corporations begin the in-

vestigation of the United States Steel Corporation, and its subsidiary companies?

A. They began their investigation pursuant to a resolution that was passed in the House at the beginning of 1905.

Q. Have you a copy of that resolution?

A. I had a copy made as it appears on our files; that is to say, the substance of it. It is here (producing paper).

MR. LINDABURY: You had better state the date of that resolution. I do not think it appears what date it is, in his answer. It will help identify it, at any rate.

MR. DICKINSON: I offer copy of the resolution of January 28th, 1905, entitled Fifty-Eighth Congress, Third Session.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 206, November 19, 1912", and a copy thereof will be found in the book of exhibits).

By MR. DICKINSON:

Q. Did the investigation proceed under and by authority of this resolution?

A. To the best of my information and belief, it did.

Q. How long did that investigation continue?

A. It is still in progress.

Q. Was a report made?

A. A report was issued about July 1st, 1911, entitled Part I, of the Report of the Commissioner of Corporations on the Steel Industry. Another part was issued in January, 1912.

Q. How was that entitled?

A. That was entitled "Preliminary report on the cost of production in the steel industry."

Q. Has the investigation continued from the time you have stated down to the present time?

A. Yes.

Q. When was the first report that you have referred to? When did they begin preparing to put it in print?

A. In June; although the copy was nearly prepared in May for the part that was published at the end of June or the first of July.

Q. State whether or not it was known to the United States

Steel Corporation that that report was being printed with the view of publication?

MR. LINDABURY: Known at what time?

MR. DICKINSON: Well, about the period that you have stated, when it was being printed.

A. Definite information was conveyed to the Chairman of the Steel Corporation that the publication was imminent the first part of May.

By MR. DICKINSON:

Q. In order to show the movement of market prices of iron and steel products, state what sources of information are available?

A. In order to show the movement of market prices of iron and steel products, two sources of information generally are available. One source consists in the market quotations of reliable trade journals, such as the Iron Age, which publishes currently the prices at which such products are being sold. Another source is found in the books of the companies that sell such products. The first source is, of course, readily accessible. The second source is not so accessible, and it is a much more difficult matter to compile a table of prices from the books of the companies, which shall accurately represent the general movement of prices from time to time. The terms on which the sales or contracts of sale are made and entered in the books vary considerably. The orders are given and sometimes these are for prompt delivery, sometimes for future delivery, and in tracing the market movement of prices it is important to distinguish between the two. The terms vary considerably for different products, at different times, on different occasions. They may include freight, or may not, and the other terms may affect the prices made and the comparability of prices that might be noted for individual transactions. Then the specifications of the goods are various, both in quality and in the form or size of the commodity ordered in respect to a good many commodities. Here particularly there is a difficulty in taking the prices from the books. The prices which should be obtained should be comparable, should be for

the same thing, and when you get the prices from the books they are apt to combine different sizes. The price may be the same from one time to another for the base size, but the lots that are ordered may include different groups of sizes. Now the base size is the one usually quoted in the market reports, but in the sales as made various sizes may be included, and the different lots ordered being of different specifications and size, etc., will have extras added to them, varying generally according to a fixed scale, which, unless they are separated and only comparable sizes taken, would render the sizes taken from the books in many cases incomparable. So it is a much more complicated matter to get the prices from the books than to use the market quotations as published, and the market quotations published by a reliable trade journal, like the Iron Age, are probably quite representative of the going prices that are being made. In fact these prices are often used as a basis for business contracts as representing correctly the market movement of prices.

Q. Have you prepared tables showing the prices and production in the United States of certain materials and commodities such as ore, Bessemer iron, rails, billets and so forth, and if so state upon what figures these tables are based?

A. I have prepared such tables, including the commodities mentioned, and a number of others. Most of these tables, so far as they relate to prices, were compiled from the Iron Age, which, as I have stated, is an authoritative publication on market prices of iron and steel products. Two exceptions in respect to prices here under consideration were with respect to ore and rails. For rails I took the prices from the reports of the American Iron & Steel Association, which is also an authoritative publication. The reports of this Association are gotten up by people who are in intimate relations with the iron and steel producers, compiling statistics of production in a confidential manner. The prices of ore I also took from the reports of the American Iron & Steel Association. These are also regarded as authoritative.

Q. Did you make any report as to the production of ore, and if so, upon what did you base that?

A. The tables of production I compiled, with the excep-

tion of iron ore, from the reports of the American Iron & Steel Association already mentioned. I have alluded to the authoritative character of these reports in respect to production. They are based on confidential information furnished by the producers for their own use. The tables for the production of ore I took from the official reports of the United States Geological Survey, which is also an authoritative publication on the production of iron ore and other mineral products.

Q. For what purpose were these tables made by you?

A. These tables were made in the regular course of the investigation by the Bureau of Corporations into the iron and steel industry.

Q. Have you a list made out of these tables covering the commodities I have referred to, and if so, please read the list and let the stenographer take it down.

A. I have a list, which is as follows:

Table 1. Prices of Lake Superior iron ore at lower Lake ports, according to the reports of the American Iron & Steel Association, 1895-1911 (dollars per gross ton).

Table 2. Prices of four typical grades of Lake Superior iron ore at lower Lake ports, derived from price quotations in the reports of the American Iron & Steel Association, 1895-1911 (dollars per gross ton).

Table 3. Prices of four typical grades of Lake Superior iron ore at lower Lake ports, derived from price quotations in the reports of the American Iron & Steel Association, 1895-1911, with adjustment for change in base grades (dollars per gross ton).

Table 4. Prices of Mesabi Bessemer ore at lower Lake ports, derived from price quotations in the reports of the American Iron & Steel Association, with adjustment for change in base grade, and estimated prices at mine, 1895-1911 (dollars per gross ton).

Table 5. Average monthly prices of Bessemer pig iron at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per gross ton).

Table 6. Average monthly prices of Bessemer billets at

Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per gross ton).

Table 7. Average monthly prices of heavy standard Bessemer steel rails at mills in Pennsylvania, according to the reports of the American Iron & Steel Association, 1895-1911 (dollars per gross ton).

Table 8. Average monthly prices of steel beams at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 9. Average monthly prices of tank plates at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 10. Average monthly prices of steel bars at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 11. Average monthly prices of black sheets at Pittsburg, according to weekly quotation of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 12. Average monthly prices of plain wire at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 13. Average monthly prices of wire nails at Pittsburg, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100-lb. keg).

Table 14. Average monthly prices of tin plate at New York, according to weekly quotations of the Iron Age, 1895-1911 (dollars per 100-lb. box).

Table 15. Average monthly prices of pig tin at New York, according to monthly quotations of the Iron Age, 1895-1911 (dollars per 100 lbs.).

Table 16. Average prices of beams at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross tons).

Table 17. Average prices of tank plates at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 18. Average prices of steel bars at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 19. Average prices of black sheets at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 20. Average prices of plain smooth wire at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 21. Average prices of wire nails at Pittsburg, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 22. Average prices of coke tins at New York, according to the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton in 100-lb. boxes).

Table 23. Simple average prices of Bessemer iron, foundry iron, Bessemer billets, steel rails, beams, tank plates, steel bars, black sheets, plain smooth wire, and wire nails, according to quotations in the Iron Age (steel rail quotations from the reports of the American Iron & Steel Association), 1895-1911, inclusive, by months (dollars per gross ton).

Table 24. Average prices of heavy steel products (billets, rails, beams, and plates), according to quotations in the Iron Age (prices of rails taken from the reports of the American Iron & Steel Association), 1895-1911, inclusive, by months (dollars per gross ton).

Table 25. Average prices of light steel products (steel bars, sheets, wire, and nails), according to quotations in the Iron Age, 1895-1911, inclusive, by months (dollars per gross ton).

Table 26. Production of iron ore in the United States, in the Lake Districts and from the Mesabi Range, by years, 1895-1911.

Table 27. Comparison of production of steel rails in the United States and the average price of standard rails at Pennsylvania mills, 1895-1911.

Table 28. Comparison of production of total crude steel and steel ingots (Bessemer and open hearth) in the United States, and the average price of Bessemer billets at Pittsburg, 1895-1911.

Table 29. Comparison of production of wire nails in the

United States and the average price of wire nails at Pittsburg, 1895-1911.

Table 30. Comparison of production of tin and terne plates in the United States and the average price of tin plate at New York, 1895-1911.

Table 31. Average prices of specified iron and steel products in the United States for the periods indicated (dollars per gross ton).

Table 32. Average prices of specified iron and steel products in the United States for the periods indicated (dollars per gross ton).

Table 33. Average prices of specified iron and steel products in the United States for the periods indicated (dollars per gross ton).

Table 34. Average prices of specified iron and steel products in the United States for the periods indicated (dollars per gross ton).

Q. Dr. Walker, please state the manner in which you prepared these tables.

A. In the foregoing list the price tables which were compiled from the "Iron Age" quotations were taken from weekly quotations appearing in the "Iron Age." These weekly quotations were averaged to obtain the average monthly quotations, and the average monthly quotations were averaged to obtain the average annual quotations. For some products a range of prices appeared in the quotations. For such products I took the lower of the two quotations, the list price being regarded as the price that was generally obtainable by the large and strong buyers who bought, generally, the bulk of the commodity.

Sometimes quotations were missing in the "Iron age," and in such cases I pursued the usual scientific method of making statistical tables of prices, of interpolating the price. These interpolations, where they occur in the tables, are noted in red ink, and marked as such. The interpolation in every case was the mean between the quotation of the preceding and succeeding months.

The price tables include prices for two commodities which are not taken from the "Iron Age," as already stated, name-

ly, rails and ore. For rails, the prices were taken from the American Iron and Steel Association reports, which are quoted there as monthly average prices, and are simply embodied in the tables submitted. The prices for ore, which were also taken from the reports of the American Iron and Steel Association, are shown in four tables. These prices, as I have already said, were generally annual prices for ore, ore being chiefly sold on an annual contract.

Where a range in price appeared, when I came to average the prices, I used the mean of the two prices, the variation in price being taken to correspond to a variation in the market in ore during the year. These ore prices are shown in four tables, as I have said. The first one of the ore tables shows the prices as they are quoted in the original reports, from which they were taken, all of them. The second table shows the prices for four typical grades of ore—the four grades which are now usually quoted. The third table takes account of the change in the base analysis of the ore, which was made in 1907. That is to say, the prices as quoted are changed so as to make the prices for 1907 and subsequent years shown in the table comparable with the prices preceding that date.

Q. Right there I wish you would explain that change of base, so as to make that a little clearer.

A. They changed the iron content, which was to represent the base grade of ore, and a correspondingly proportional change was made in the price, to correspond to the change in the iron content used as the base. Then, in the fourth table, I made an estimated price of Mesabi Bessemer ore for the period indicated, at the mine, taking the adjusted price of Mesabi Bessemer for the whole period, as shown in the third ore table, and then deducting from that price, which is the price at lower lake ports, the transportation charges, as nearly as could be determined, in order to get the price at the mine.

MR. LINDABURY: That is, at the mouth of the mine, I suppose?

THE WITNESS: At the mouth of the mine.

The rail rate was constant. There was some fluctuation in the lake rate, from the head of the Lakes. The quoted lake rates, as shown by the "Iron Age," were taken for the transportation charge on the Lakes. In that way an estimated mine price, based on the lower lake prices for the period specified, was determined.

By Mr. DICKINSON:

Q. You spoke of interpolations that were made being indicated by red ink. That would show the number of interpolations. How do they affect the result, in your judgment, as a statistician and expert?

A. The interpolations were comparatively few in number, and had no sensible effect on the average prices for any given year in which such interpolations occurred.

Q. State whether or not, in your judgment, based upon your training and knowledge and experience in such matters, this is a fair and just economic method of arriving at the results you had in view.

A. These tables were compiled, of course, for the purpose of the Bureau's report, and were intended as a scientific inquiry into the movement of prices. This method of interpolation is one that is commonly practiced by statisticians in dealing with prices in similar matters, and was adopted in this case for that reason. In my judgment this is a proper scientific method to show the movement of prices, and in any case it makes no sensible difference in the result. But the special reason why it is preferable to do it this way, rather than to leave a gap, is that if we also make diagrams of the prices, then we do not have these gaps in the line, which give an appearance of irregularity in the movement of the market which did not in fact exist.

Q. Have you those tables to which you have just referred?

A. Yes. (Producing tables).

Mr. DICKINSON: I offer these tables in evidence. They are 34 in number.

Mr. LINDABURY: We object to each of them, on the ground

that each is based on hearsay, and is irrelevant, incompetent and immaterial.

(The tables referred to were thereupon marked Government Exhibit Walker No. 207, November 19, 1912, to Government Exhibit Walker No. 240-242, November 19, 1912, both inclusive).

Q. I observe this table you begin with the year 1895. Please give your reasons for taking that as the initial year.

A. These tables were compiled with two general purposes in view. One was to study what particular facts and circumstances from month to month or from year to year had shown influence on the movement of prices. Another object in view was to see how the prices for one period of years taken together compared with the prices for a number of periods of years taken together, and of course particularly we had in view to see what the average prices, after the Steel Corporation was organized, for example, might be, as compared with the prices before the Steel Corporation was organized.

Now, in respect to the first point of view, it did not make much difference where we began; the more remote the year the less interest we would have in what the particular circumstances were that influenced prices in that particular time; but for the second point of view, it was very important that we should make a judicious selection of the periods, in order that the price periods that were compared should be, from a scientific point of view, comparable. That is to say, that the circumstances and the conditions of the business in so far as they normally affected prices, should be comparable. The Bureau—I should say, I myself—decided that the year 1895 was a fair point to begin in order to compare, for example, the movement of prices for a period of years during the organization of the Steel Corporation with a period of years before its organization. I decided on that particular year for the beginning of the tables for several reasons. In the first place, there had been during the 90's, the last decade of the last century, a very marked technical development which had greatly reduced the cost of manufacture. This marked technical development made itself particularly felt in the latter part of that decade, and only to a comparatively

slight extent in the earlier part of that decade. Of course it is evident, and it is a fact, that with such a development, costs tended to be lower, and prices under normal conditions of business would tend likewise to be lower. I considered that 1895 was a fair point on that ground.

The second point of view that I had in mind was the conditions of supply of raw materials for the iron and steel industry. During the period of the Steel Corporation's existence, I should say the iron and steel industry has been based almost entirely on Lake Superior ores, and predominantly on Mesabi ores. The Mesabi Range was not opened until 1892, and then only about 4,000 tons were shipped. The production continued to be very small until 1895, when it approximated 25 per cent of the total shipments. Thereafter the proportion of Mesabi ore increased considerably, and by the time the Steel Corporation was organized, or shortly after, at any rate, it was the chief source of supply. This was a very important fact, because the Mesabi ore is mined more cheaply than the ores of the old range, and it would not be a judicious and scientific comparison to compare prices of steel products when the higher cost old range ores were used entirely with a period when the ores very largely used were the cheaper Mesabi ores. So for that reason also I took 1895 as the limit of the period to which I would go back, although even then the proportion of Mesabi ore was small compared to the period during which the Steel Corporation was in existence.

A third standpoint was the condition of the iron and steel market generally, and taking it from this standpoint also, I decided that 1895 was as far back as it was proper to go.

The period before 1895 showed considerable variations. The two years immediately preceding 1895 were very bad years in the iron and steel business; 1893 was a year of an extraordinarily severe panic, and 1894 was a year of very great depression. It did not seem fair from this standpoint alone to take in those two years, although the other two reasons were more important. If I had gone back still further and taken in 1892 and 1891, that is, if I had embraced the whole of that decade, I would have included two years which were comparatively good in the iron and steel industry, in

which prices were distinctly higher than in 1893 and 1894; but if I had included all the years of that decade it would have made very little difference in the average prices before the Steel Corporation was organized.

That is to say, the average prices for the ten years mentioned would have been slightly, if any, higher than the average prices for the six years. As a matter of fact, the prices of Bessemer pig iron would have been lower and the prices of several other steel products would only have been a trifle higher; but the reason I left out those four years was not because the prices averaged higher or lower, but because I did not consider it a scientific, proper basis to take in those early years, when the technical conditions were not comparable in any degree with those that prevailed during the time of the Steel Corporation and when the raw material used was a much more expensive one than in the period of the Steel Corporation's existence, and I left out those four years simply for that reason, although, as I stated, it would have made very little difference if I had included them.

Considering the years I did put into these averages, before the Steel Corporation was organized, the six years from 1895 to 1900, inclusive, all of these years except one——

Mr. Lindabury: If you do not mind, I desire to note an objection to the testimony of this witness, on the ground that it is merely argumentative and simply in support of the witness's theory in making up his table, and does not consist of any statement or explanation of fact.

Mr. Dickinson: You are giving the scientific reasons that prevail and that you took into consideration, are you?

The Witness: I am.

Mr. Dickinson: Well, proceed, then.

Mr. Lindabury: I was making particular objection to the fact that this testimony is largely argumentative; also that it is based on hearsay to a large extent.

By Mr. Dickinson:

Q. Go on with your answer.

A. (Continuing). The six years I did take, included, on the whole, a period of great prosperity in the iron and steel industry. A marked exception, of course, is found in the

year 1896. The year 1895 was a boom year in the iron and steel trade, as booms were then appreciated. The prices were quite high, and the production larger than in former years.

1896 was, as stated, a year of depression. The production was greatly reduced, and in some cases by understandings among the producers.

The market was affected not only by a reaction from the boom of 1895, but also by extraneous conditions such as the Presidential election of that year.

The years 1897 and 1898 were very good years in the iron and steel business from the point of view of output. The production was larger in those two years than in any previous years in respect to iron and steel. The prices, it is true, were low. These low prices resulted, however, from the technical improvements which occurred during this time, which I have already referred to, and to the lower cost ores which were then available in a large degree.

In 1898 the iron and steel masters of the United States were proclaiming that the industry had reached such a position——

MR. LINDABURY: I object to that as hearsay. You must recognize, Judge Dickinson, that this is a mere argument. Do you desire to take testimony of that kind.

MR. DICKINSON: Of course, I cannot anticipate everything Dr Walker is going to say.

MR. LINDABURY: He is your witness and ought to be cautioned.

MR. DICKINSON: Well, of course, you may enter your objections. He is giving his testimony as an expert and as a scientist, and he is stating the reasons on which he has based his conclusions.

MR. LINDABURY: But he has not been subpoenaed here to make an argument. At least, I do not suppose he has been.

MR. DICKINSON: I cannot cabin, crib and confine the witness and tell him exactly how he is to answer. Of course, if he answers anything that you object to you have the privilege of objecting. I cannot put the witness in a straight jacket and lay down the rules——

MR. LINDABURY: I suggest that you instruct the witness that he state facts and not make arguments.

MR. DICKINSON: You may enter your exception.

MR. LINDABURY: I have entered it on the record.

By MR. DICKINSON:

Q. Go on, Doctor.

A. (Continuing) The low prices in 1897 and 1898 were largely due to the improved technical conditions in the manufacture and transportation——

MR. LINDABURY: I object to that answer as based on hearsay and as argumentative. If I have to object to every sentence——

MR. DICKINSON: (Interposing): All right, you will have to object. I am going to get his testimony.

MR. LINDABURY: When this testimony goes before the Court I at least propose to show that we did not sit silent and take it without objection.

By MR. DICKINSON:

Q. Go on.

A. It was generally stated at that time by the iron makers of the United States——

MR. LINDABURY: Objected to as hearsay.

A. (Continuing) that the iron makers of the United States expected on account of these low conditions of cost to obtain a mastery of the iron and steel markets of the world. The years 1899 and 1900, which were also included in the six year period I have mentioned, were years of extraordinary prosperity in the iron and steel industry. The production increased enormously and the prices ascended to unheard of levels. The average prices for these two years were higher than for any previous years in the period under consideration and any period subsequent to it, these high prices being partly the result of the general boom in the iron and steel trade all over the world, and partly due to the extraordinary developments in the iron trade of the United States at that time, particularly in the formation of certain great consolidations which in particular products had a monopolistic character.

At the end of 1900, in the last half of the year, the prices of iron and steel products fell markedly, but by no means to the level that had existed from the period 1896 to 1898.

MR. LINDABURY: I shall move that that answer be stricken out as not responsive to the question and as based almost altogether on hearsay, and because it is argumentative. I give notice that that motion will be made in the argument of the cause.

MR. DICKINSON: All right. The witness may proceed.

A. (Continuing) This six year period, as a whole, therefore, was one in which the industry was prospering through a large production, and through three of the six years the prices were quite high. Even in the two years 1897 and 1898, in which the prices were quite low, the profits of the companies which were well organized and up to date, were quite good.

MR. LINDABURY: I object to that answer, and move to strike it out upon the ground that it is based on hearsay and it is argumentative and without any knowledge, evidently, on the part of the witness, in respect to the fact to which he alludes.

By MR. DICKINSON:

Q. What have been the raw materials upon which the steel industry of the United States has been chiefly based since 1895?

A. The chief raw materials used in steel manufacture in the United States since 1895, have been Lake Superior iron ore and the coke of Connellsville and West Virginia.

Q. What was the total production from the Lake Superior region in 1895 and the proportion thereof to the total production of the United States?

MR. LINDABURY: As shown by what?

By MR. DICKINSON:

Q. Does that appear on your tables?

A. On table 26.

Q. State what it is.

MR. LINDABURY: What I mean is that the witness can not

know of his own knowledge, but if he has some merely statistical information and that appears, I do not object.

By MR. DICKINSON:

Q. Does that appear on one of the tables that you have put in?

A. I do not carry all these figures in my mind, but among the tables I have prepared a statement is shown giving the production of Lake ore and the total production in the United States, showing the proportion of the production of Lake ore to the total production in the United States, according to the reports of the Geological Survey.

Q. State what the total production of Lake ore was for 1895?

A. The total production of Lake ore for 1895 was 10,268,978 tons.

Q. What percentage was that to the total production of the United States?

A. 64.4 per cent.

Q. Now please answer the same question in regard to the year 1900?

A. The total production of Lake ore in 1900 was 20,564,238 tons, which was 74.6 per cent of the total production of the United States.

MR. LINDABURY: On which of your tables does that appear?

THE WITNESS: Table 26.

By MR. DICKINSON:

Q. Answer the same question as to the year 1907.

A. In 1907 the total production of Lake ore was 41,526,579 tons, which was 80.3 per cent. of the total production of the United States.

Q. Now, the total production of Lake ore in 1911 was what?

A. In 1911 the production is not reported, but the Geological Survey gives the shipments as indicated on the table, and the shipments of Lake ore in that year were 32,783,163 tons.

Q. What proportion was that of the total production of the United States?

A. That was just 80 per cent.

MR. SEVERANCE: That is not production. One is shipments and the other is production.

MR. DICKINSON: I asked him what was the proportion of the shipments to the production of the United States?

MR. SEVERANCE: He does not know what the production was. He stated he did not know the production in the Lake Superior region, and only knew what the shipments were. Therefore he cannot know the total.

MR. DICKINSON: But treating the shipments as the production there, and the production elsewhere.

THE WITNESS: The shipment is used as the equivalent of the production in the table of total production.

MR. LINDABURY: For that year?

THE WITNESS: For that year.

MR. SEVERANCE: That explains it then. Otherwise it would be misleading.

MR. LINDABURY: In other localities, is it production for that year, but simply shipments from the Mesabi?

THE WITNESS: I would have to examine the report in detail for that specific question, but I understand that would be so.

By MR. DICKINSON:

Q. What was the proportion of the ore production from the Mesabi to the total production of the Lake Superior district for the several years 1893, 1895, 1900, 1907 and 1911? Answer as to each year.

A. The production for 1893 of Mesabi ore and its proportion to the total is not given on this table, but it was about 10 per cent. It was a little over 600,000 tons, I believe.

Q. In 1895?

A. In 1895, the production of Mesabi ore was 2,839,350 tons, or 27.6 per cent of the total production of the Lake Ranges.

Q. In 1900?

A. The Mesabi production was 8,158,450 tons, or 39.7 per cent. of the total production of the Lake Region.

MR. LINDABURY: That is on your table, is it, Doctor?

THE WITNESS: That is on my table, yes.

By MR. DICKINSON:

Q. In 1911?

A. The production on the Mesabi Range, which is in this case, again, given as shipments, not as production, by the Geological Survey, was 22,160,101 tons, or 67.6 per cent. of the total of the Lake Districts.

Q. State whether or not there were, previous to 1895, any extensive consolidations in the iron and steel trade, and what control, if any, previous to that time, was exercised over prices, other than the control of competition, and in what way.

MR. LINDABURY: That is objected to as calling for hearsay.

THE WITNESS: Previous to 1895 there were very few important consolidations in the steel industry, the most important being the Illinois Steel Company and the merger of the Duquesne plant with the Carnegie interests. The consolidations, therefore, had very little influence on market prices prior to 1895, although considerable influence was exercised from time to time in specific products, by the price pools, such as the rail pool—

MR. LINDABURY: The answer is objected to as opinionative, merely.

By MR. DICKINSON:

Q. Have you prepared diagrams showing the course of prices of certain commodities based on the price tables which you have prepared?

A. I have.

Q. For what purpose were those diagrams prepared?

A. They were prepared in the regular course of the investigation of the Bureau of Corporations into the steel industry.

Q. Have you the diagrams that you were requested to produce by the Government?

A. Yes, sir.

Q. Have you a list of them?

A. Yes, sir.

Q. Please read the list.

A. Diagram I.—Base prices of four typical grades of Lake Superior iron ore at lower Lake ports, 1895-1911.

Diagram II.—Base prices of Mesabi Bessemer ore at lower Lake ports, and estimated prices at mine, 1895-1911.

Diagram III.—Average monthly prices of Bessemer pig iron and Bessemer billets at Pittsburgh, and heavy Bessemer rails at mills in Pennsylvania, 1895-1911.

Diagram IV. Average monthly prices of steel beams, plates, bars, and sheets at Pittsburgh, 1895-1911.

Diagram V. Average monthly prices of plain wire and wire nails at Pittsburgh, 1895-1911.

Diagram VI. Average monthly prices of tin plate and pig tin at New York, and black sheets at Pittsburgh, 1895-1911.

Diagram VII. Simple average price of Bessemer pig iron, foundry pig iron, Bessemer billets, steel rails, beams, tank plates, steel bars, black sheets, plain smooth wire, and wire nails, 1895-1911.

Diagram VIII. Simple average prices of steel products, 1895-1911.

Q. State the manner in which you prepared these diagrams.

A. I prepared these diagrams in the usual manner that such price diagrams are prepared, using the price tables which have already been submitted in evidence. In a horizontal direction spaces were set off indicating months and other periods of time, and in a vertical direction spaces were set off indicating amounts of money, for the purpose of establishing the level of price. The price table was then examined for a particular year and month, and the price noted, and a corresponding point placed on the diagram for that particular price; and likewise for each other price noted on the table. The points thus indicated on the diagram were then connected by a continuous line, to show quickly to the eye the movement of prices as shown in the table.

Q. These diagrams are a graphic form of what is shown in the table, are they?

A. These diagrams simply show, in a graphic manner, exactly the same information that is indicated in the table.

MR. DICKINSON: I offer these diagrams in evidence.

MR. LINDABURY: We object on the ground that they are based upon hearsay.

(The diagrams referred to were thereupon marked Government Exhibit Walker No. 243, November 19, 1912, to Government Exhibit Walker No. 250, November 19, 1912, both inclusive.)

By Mr. Dickinson:

Q. Referring to diagram No. 5, Government Exhibit No. 247, explain the broken red line in respect to the price of wire nails in 1895 and 1896.

A. The broken red line on the said diagram corresponds to a note attached to table 13, Government Exhibit No. 219, showing the prices of wire nails at Pittsburgh, in which the said prices are given and an explanation of the significance of the said calculations of corrected prices.

Q. And this broken line is illustrative of the note?

A. That broken line is illustrative of the note.

Q. Referring to diagram No. 3, Government Exhibit No. 245, explain the movement of the price of rails, as indicated on that diagram.

A. Diagram No. 3, Government Exhibit No. 245, shows the price of rails, in graphic form, as given in the table showing the prices of rails.

Before considering the form of this price line, it should be noted that where prices are competitive in the iron and steel market, the line or curve showing such prices generally has a rapidly fluctuating character, or at least changes, usually, from month to month; but if artificial conditions prevail in the fixing of the prices, the price does not tend to fluctuate from month to month, but remains at the same level for several months at a time, and often for longer periods.

Mr. Lindabury: I object to that answer as not responsive to any question, as merely opinionative, and as based upon hearsay, reasoning, deduction and other illegal bases.

Mr. Severance: And as contrary to the admitted facts of the case that pools never held people.

By Mr. Dickinson:

Q. Look at the prices as indicated by that diagram, and state, from the standpoint of your opinion as an expert, what they show as to competitive and non-competitive conditions.

MR. LINDABURY: I object to that question, because it asks for an opinion on a non-expert question, and in respect to which he cannot be an expert or have any scientific knowledge that is not possessed by the Court and all the world.

By MR. DICKINSON:

Q. Answer what that indicates to you, as a statistician and expert.

A. Taking, first, the prices as indicated on the diagram before the formation of the United States Steel Corporation, it will be noted that while there is a considerable variation in the level of prices during these six years, yet for a considerable number of months at a time, the prices remain the same. This uniformity of price level for a number of months at a time is a very definite and positive indication of an artificial control of prices. Such an illustration is found in the diagram between the months of September, 1895, and December, 1896, when the price of rails was maintained at a comparatively high level of $28 a ton, without change.

MR. SEVERANCE: I move to strike out that statement, that that is a comparatively high level. The witness certainly is not qualified to state whether the price was high or low.

THE WITNESS: That these prices were at a comparatively high level during this period is indicated, in part, by the fact that, for similar products which were subject to competitive influence, the margins varied very widely. The price of rails at the end of 1896 and the beginning of 1897 began to decline, and fell from $28 a ton in December, 1896 to $18 a ton in March, 1897. For a period of about two years thereafter, the price of rails remained at this low level, and during a portion of this period, at least, the prices fluctuated from month to month, indicating a competitive condition in the rail market. At one time, in 1898, the price of rails fell as low as $17 a ton. At the beginning of 1899, the price of rails began to advance very rapidly from month to month, partly due to the general boom in the iron and steel market, and the influence of the great consolidations and monopolistic combinations that had been established at that time. By November, 1899, they had advanced to $35 a ton, or an advance, in just a year, of 100

per cent. From November, 1899, until August, 1900, the price of rails remained substantially unchanged, at the extraordinarily high price of $35 a ton; while the prices of other iron and steel products were also at a very high level during a part of this period, during the last two months of the period specified, the other products had, at least a number of them which were subject to competitive influences, fallen very rapidly. The price of rails, however, did not fall when the price of competitive products fell, but remained at this extraordinarily high level of $35 a ton, plainly indicating the artificial conditions—

MR. LINDABURY: I object to the opinion of the witness as to the indication, and as to what he thinks of this, that and the other.

Do you want all of these adjectives, Judge—"extraordinarily"; and all these expressions that are to be expected in an argument, but not in testimony.

MR. DICKINSON: I cannot put his language through a sifter for him, and sift out particular words.

MR. LINDABURY: I think we shall have to suspend this examination and go to Philadelphia to see whether the Court wants this kind of testimony.

MR. DICKINSON: All right; we will go there.

MR. LINDABURY: This gentleman is hired to come here and make an argument—

THE WITNESS: I beg your pardon; I am not hired to come here and make an argument.

MR. LINDABURY: I suppose you are doing it for love.

THE WITNESS: I am doing it at the direction of my superior officers, and quite unwillingly.

MR. LINDABURY: At whose direction?

THE WITNESS: At the direction of the Secretary of the Department of Commerce and Labor. I have other things to do.

By MR. DICKINSON:

Q. You are not paid as an expert witness, are you?

A. I am not.

Q. Did you decline to be examined until you were directed by your chief to be examined?

A. I did.

Q. Do you know the fact that application had to be made by the Attorney General to Secretary Nagel, and directions issued by him for you to give your testimony in this case?

A. I respectfully declined to testify until I was ordered to do so.

Q. And the order came from the chief of your department and the Secretary?

A. It did.

MR. LINDABURY: Who ordered you to prepare or make an argument?

THE WITNESS: I was asked to give my opinion and knowledge about these facts in regard to iron and steel prices, which I am doing.

MR. LINDABURY: You are giving no knowledge at all, but merely your opinion, reasoning, argument. You are telling nothing you know.

MR. DICKINSON: I object to offensive language of that sort to the witness. He is qualified as an expert, by training, by education and by special study of this subject, and we are entitled to have his opinion. You, of course, are entitled to except; but you have no right to insult the witness by telling him that he is stating nothing that he knows.

MR. LINDABURY: The witness has been stating things that are not matters of expert testimony, and that no rule of evidence that ever existed would permit.

MR. DICKINSON: Well, you have a right, of course, to except.

MR. LINDABURY: And making a mere argument, as any school boy could see.

MR. DICKINSON: Well, do you want to stop the examination or go on and enter your objections on the record?

MR. SEVERANCE: Are you going to keep on the same way? We ought to know that.

MR. DICKINSON: I do not know what language the witness is going to use, of course.

MR. LINDABURY: If the Department of Justice has induced

the Department of Commerce & Labor to send a gentleman here to make this sort of an argument I think we ought to take the judgment of the Court as to its admissibility.

MR. DICKINSON: I object to the statement that they induced him to come here and make an argument. That is a reflection upon the Department of Justice and that is a reflection upon counsel. They have not induced any witness to come here to make an argument; they have asked him questions.

MR. LINDABURY: I make it in all seriousness. For half an hour we have heard nothing else.

MR. DICKINSON: Do you mean to say the Department of Justice has induced this witness to come here to make an argument?

MR. LINDABURY: I mean to say that he is making an argument and nothing else.

MR. DICKINSON: Your statement was that the Department of Justice had induced him to do so. Now, I resent that and state that it is not true, and it is an unjust reflection upon the Department of Justice and upon counsel in this case.

MR. LINDABURY: The witness says his superior was induced by the Department of Justice to send him here to give what he calls an opinion.

THE WITNESS: I did not say that.

MR. LINDABURY: (Continuing)—and what he calls an opinion is obviously the merest argument.

MR. DICKINSON: Shall the witness proceed or not?

MR. LINDABURY: Ask him a question.

MR. DICKINSON: I will let him go on and finish the one I have already asked him.

MR. LINDABURY: You have not asked him any that calls for what he has been saying.

MR. DICKINSON: I have asked him to state as an expert what that diagram as prepared indicates and shows as to the variations of prices.

MR. SEVERANCE: It shows on its face, does it not?

MR. DICKINSON: Well, if I choose to have his opinion upon it I am entitled to have it for whatever it may be worth.

MR. SEVERANCE: But why do you want an opinion when

the diagram shows in figures just what you are now asking him?

MR. DICKINSON: I must be permitted to put in what evidence I think is proper and not be controlled by opposing counsel, and if I think it is right and proper to have his opinion, I want to have it. I cannot let counsel on the other side dictate to me what witnesses I shall call or what kind of testimony I shall introduce. Of course, counsel on the other side have a right to object to anything they think they should object to.

MR. LINDABURY: But you said, yourself, you did not anticipate what this witness was going to say.

MR. DICKINSON: I did not anticipate his particular language, of course.

MR. LINDABURY: Mr. Brown, is the Court in session in Philadelphia?

SPECIAL EXAMINER BROWN: I believe it is, sir.

MR. DICKINSON: I understood you to say that we could go ahead and see whether the answers were such that you would object—see whether you would want to go to Philadelphia.

MR. LINDABURY: Go on.

By MR. DICKINSON:

Q. You may proceed, Dr. Walker.

MR. SEVERANCE: I thought he had finished his answer.

MR. LINDABURY: His argument, you mean.

MR. COLTON: He had only gotten up to about 1900.

THE WITNESS: Taking next the period subsequent to the organization of the Steel Corporation we find that prior to its organization the price of rails had been for several months continuously at $26 per ton, and that almost immediately after its formation the price was raised to $28 per ton. From that date, namely, May, 1901, until the end of the period shown in the diagram, namely to December, 1911, the price of rails remained absolutely unchanged at $28 per ton, although there were very marked changes in the conditions of supply and demand for rails, and marked changes in the prices of other iron and steel products, and particularly products quite similar to rails. The absolute lack of any relation between

the prices of rails and the influences of supply and demand during this long period is a positive indication of the existence of artificial conditions of price control.

MR. LINDABURY: I object to the opinion of the witness as to what the absence of conditions or the presence of conditions shows, and his statement with regard to price control, and his assumptions from the matters he has stated, because in that respect his answer is merely an opinion or argument of no evidential value and does not come within any rules of law that ever existed anywhere in the civilized world.

By MR. DICKINSON:

Q. What are rails made from?

A. Blooms, or, you might say, from ingots, or from pig iron.

MR. SEVERANCE: You might say iron ore, then.

THE WITNESS: Yes; but they come directly from blooms.

By MR. DICKINSON:

Q. Have you anything on your table there indicating the prices of the raw material out of which the rails are made?

A. The price of blooms is not noted in the market, but a very similar product, namely, billets, is shown; that is to say, both blooms and billets are semi-finished steel, used in rolling——

MR. LINDABURY: Blooms and billets, you say, are the same?

A. (Continuing) Similar, I say. The existence of an artificial control of the price of rails during the period since the organization of the Steel Corporation, when it has remained as stated at a uniform level, is plainly indicated by comparing it with the price movement of billets, which during that period fluctuated very widely. For example, the price of billets in June, 1902, was over $32 a ton and, again, in May, 1907, it was more than $30 a ton. In between those two dates, namely, in October, 1904, the price of billets fell to less than $20 a ton, and, again, in December, 1911, the price of billets was less than $20 a ton. In other words, there was a change in the price of billets of $12 a ton during

the period in which there was no change at all in the price of rails. These two products, as I have stated, are those which may be most fairly compared among the products which are quoted in the market.

MR. LINDABURY: I object to the witness's argument made since the last objection and give notice that I will move to strike out.

(Thereupon a recesss was taken until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed

MR. LINDABURY: If the Examiner please, we feel that we are not justified in going on with this testimony without taking the opinion of the Court with regard to the propriety of the course pursued by counsel for the Government and the validity of the testimony given. We therefore give notice to counsel on the other side that we will apply to the Court in Philadelphia at ten o'clock tomorrow morning to strike out the evidence of this witness which has been objected to, and we ask the Master to adjourn the hearing until opportunity is had, which would perhaps require an adjournment until day after tomorrow.

MR. DICKINSON: You say you are going to make the application?

MR. LINDABURY: We give notice now that we shall make application at ten o'clock tomorrow morning to strike out the testimony of this witness which has been objected to.

MR. DICKINSON: Will you give us a memorandum of what you object to?

MR. LINDABURY: It has not yet been written out, so that we can only say at this time that whatever the record shows we object to. We shall probably waive some of those objections when we see the testimony, but we shall not, of course, waive any of these later points. I am not prepared to say what, if any, of the earlier ones we shall waive.

MR. DICKINSON: I understand that you decline to proceed further now?

MR. LINDABURY: Unless you will limit your examination to mere matters of fact that do not involve the questions we are raising.

MR. SEVERANCE: I understand Judge Dickinson said he did not care to do that.

MR. DICKINSON: I said I could not tell just what language the witness was going to use in answering questions. I was about to ask another question——

MR. LINDABURY: You do not want to escape responsibility for the testimony, Judge? If you consent to strike out the testimony——

MR. DICKINSON: No. I will not do that.

MR. LINDABURY: Therefore you assume responsibility for it, whether it was induced by the question you asked or not; whether it was responsive to your question or not?

MR. DICKINSON: The question I wanted to know about was whether you decline to proceed further now.

MR. SEVERANCE: I think it is better to stop and have that settled, unless some new line of examination is proceeded with; and I understand the Judge says he is going to take up another diagram.

MR. DICKINSON: The next question I was going to ask is this:

Please refer to diagram No. 4, Government Exhibit No. 246, and explain the curve for beams.

MR. LINDABURY: That question is not unlike the one which was asked before, which led to this dissertation that we call an argument. I suppose this question would lead to another.

MR. DICKINSON: I ask that question, anyway, and if you object to the witness answering it you may do so.

MR. LINDABURY: We think we ought not to go on; that we should stop and have this important question settled before we proceed any further with this witness.

MR. DICKINSON: We think we ought to go on, and the Examiner, of course, is fully aware of the situation. It is for him to rule.

MR. LINDABURY: The examiner has heard the evidence and

noticed that his witness goes on giving this sort of testimony, although the testimony is not asked in any specific way by counsel; and there seems to be no other way of controlling it except by taking the judgment of the Court.

THE EXAMINER: It seems to me that the defendants are afforded ample protection by objection to the testimony as given. If it is desired to raise this question tomorrow morning, I hardly see the necessity of stopping at this point. The same objection will cover all of the testimony produced today. If it is valid, we accomplish that much more. If it is invalid, of course your rights are protected. I hardly see the necessity of adjourning at this time.

MR. DICKINSON: I understand your Honor rules that you will not adjourn?

THE EXAMINER: We will not adjourn at this time.

MR. LINDABURY: What is the ruling of the Examiner on the whole question, which was for adjournment sufficient to give us an opportunity to make the motion tomorrow morning?

THE EXAMINER: I think if the testimony is transcribed at this time, which I understand is being done, your rights will be amply protected. You will have sufficient time if we adjourn at four o'clock.

MR. LINDABURY: But you will adjourn over tomorrow to give us the opportunity to make the motion to the Court?

THE EXAMINER: Yes. I do not see the necessity of taking an adjournment at this time, however.

MR. LINDABURY: Very well. I simply wanted to understand the ruling. That is all.

Whereupon——

FRANCIS WALKER,

the witness under examination at the taking of recess, resumed the stand for further

DIRECT EXAMINATION

By MR. DICKINSON:

Q. Please refer to Diagram No. 4, Government Exhibit No. 246, and explain the curve for beams.

MR. SEVERANCE: I think that we shall object to that. The exhibit shows for itself what it is, and needs no explanation. There is a legend on it that shows exactly what it is.

MR. LINDABURY: I understood the question to ask what the exhibit shows.

(Upon request, the stenographer repeated the question as recorded).

MR. SEVERANCE: It is shown here by a certain color.

MR. DICKINSON: I will put the question this way:

Q. Please refer to diagram 4, Government Exhibit No. 246, and explain the curve for beams, and what it indicates as to fluctuation of prices and artificial conditions.

MR. LINDABURY: I object to that. That is the very question that we raised this morning.

MR. DICKINSON: Strike out "artificial conditions," then, and substitute "as to competitive conditions."

(The question as modified was repeated by the stenographer as follows):

"Q. Please refer to diagram 4, Government Exhibit No. 246, and explain the curve for beams, and what it indicates as to fluctuation of prices and as to competitive conditions."

MR. LINDABURY: We object to that question, because it calls for the witness's opinion or speculation with respect to a matter that does not admit of expert evidence, and which is the very question at issue in this case, and upon which the Court must pass, and therefore it calls, as the earlier questions did, for a dissertation or argument with respect to the merits of this case.

By MR. DICKINSON:

Q. Proceed with your answer.

A. Taking, first, the prices before the organization of the Steel Corporation, for the period indicated on the diagram, we find that the price of beams runs frequently for a number of months at a time without any fluctuation in price, while other products which were subject to competitive conditions fluctuated almost constantly from month to month.

MR. SEVERANCE: We move to strike that out on the ground that it is clearly hearsay.

MR. LINDABURY: And that it assumes that other articles were subject to competitive conditions without evidence to that effect and without the witness having any knowledge of his own on that subject.

By MR. DICKINSON:

Q. From your knowledge derived as an economist, and by a study of prices, and your knowledge of iron ore, state whether or not, when there are free competitive conditions the market is characterized by fluctuations and changes in prices from time to time.

MR. LINDABURY: Objected to as calling for an expert opinion, upon a non-expert question; and it is not shown that the witness has any knowledge on the subject of the kind that would qualify him to give an expert opinion, if it were competent to take the opinion of experts on such a question.

By MR. DICKINSON:

Q. Now answer the question.

(The stenographer read the question as above recorded).

MR. DICKINSON: Make that read "a knowledge of the iron and steel business".

MR. SEVERANCE: Mr. Lindabury's objection can stand as if it were repeated, although the question has been modified.

MR. DICKINSON: The only change was from iron ore to iron and steel business.

MR. SEVERANCE: That is quite a different question.

A. Where the market conditions are really competitive,

the prices of iron and steel products, of the kinds here under consideration, naturally tend to fluctuate from month to month and from time to time, and do not tend to run at uniform prices for a long period of months together.

By Mr. Dickinson:

Q. Where you have over a period of months continuously a constant price, what does that indicate to your judgment as an economist as to artificial control of prices?

Mr. Lindabury: I object to that as calling for an opinion upon a question which does not admit of expert evidence, and from a witness who has shown no qualifications to give expert testimony, even if the subject matter did admit of such testimony.

By Mr. Dickinson:

Q. Now answer the question.

(The question was repeated by the stenographer).

A. For iron and steel products here under consideration, that indicates quite positively that such prices are controlled by artificial conditions, and not by competitive conditions.

By Mr. Dickinson:

Q. Now proceed, if you had not finished with your answer in regard to diagram No. 4, in regard to beams.

Mr. Severance: The same objection as to the last question.

A. Taking certain illustrations of the price movement of beams for the period 1895 to 1900, we find, for example, that from June, 1896, to April, 1897, with a very brief exception at the end of 1896, the prices were maintained at about $1.55 per hundredweight.

During these same months the price of tank plates, which in its commercial relations and also in relation to the conditions of production, cost, and so forth, is a nearly related product—the price of tank plates, which fluctuated from month to month during this period, fell rapidly from about $1.28 per hundredweight to about $1.08 per hundredweight. The margin between the two thus rapidly increased, the one,

the commodity whose prices were controlled by competitive conditions, declining, while the commodity whose prices were controlled by artificial conditions remaining at a nearly constant level, and at a relatively much higher price than it would have been compared with plates if both of them had been controlled by competitive conditions.

MR. LINDABURY: The question and answer are objected to, and we shall move to strike them out, on the ground that they cover a period before the organization of the Steel Corporation or any of the subsidiaries of the Steel Corporation; and also on the ground that they assume a state of facts of which there is no evidence; and, further, because they are irrelevant and immaterial. It is merely speculative, and amounts to an opinion with rgard to a non-expert question.

By MR. DICKINSON:

Q. Now proceed with your answer.

A. After April, 1897, the price of beams declined rapidly and in July, 1897, it reached a price of about $1.00 per hundredweight, as compared with $1.55 per hundredweight, or thereabouts, in April, 1897. Thereafter the price of beams remained at a comparatively low point, compared with the year 1896, for the rest of that year, and in the following year it advanced by several successive steps, during which the price, however, was uniform in several instances for several months continuously. In 1899 the price of beams, like most other iron and steel products in that year, rose very rapidly until it reached a remarkably high elevation, namely, about $2.25 per hundredweight, in September, 1899. The price of beams remained at that point without change during the rest of that year, and for the five succeeding months in the next year. This gives a period of about nine months during which there was no change in the price of beams. While the price of beams was still held up at this high point, at the end of the period just indicated the prices of certain other products of a similar character, which were influenced by competitive conditions, were falling very rapidly. Thus plates declined from a high point of about $2.5[illegible] in September, 1899, to a point of about $1.70 in May, 190[illegible]. That is to say, while beams were constant at about $2.25 per

hundredweight, plates fell from about $2.85 per hundredweight to about $1.70 per hundredweight. Plates are a very similar product, so far as price goes, and where the two products are sold under competitive conditions the price level is generally about the same, and even where they are sold under conditions of artificial control, the prices which are made are seldom far apart, if that control is complete.

MR. LINDABURY: Does that finish that answer?

THE WITNESS: That finishes one part of it.

MR. LINDABURY: I shall move to strike that out, upon the ground that it is based upon an assumption of fact not proven, and is opinionative and speculative, and in so far as it takes account of facts, those facts are hearsay, and the question in the matter with respect to which an opinion is given is not one which admits of expert testimony, and further, because it is irrelevant to the issue in this cause, and relates to a situation that existed, if it ever existed, before the Steel Corporation or any of its subsidiaries were formed.

By MR. DICKINSON:

Q. Now proceed with your answer.

A. In the middle of 1900 the price of beams fell quite rapidly, namely, from about $2.25 in May, 1900, to about $1.50 per hundredweight in September, 1900. They did not reach, however, such a low point as they had reached in 1898, and in this respect were unlike plates, which, though they went higher than beams, fell much lower—a phenomenon again which is characteristic of the difference between prices which are artificially controlled, and those which are competitive.

The price of beams during the last few months of 1900 was kept at about $1.50 per hundredweight, and continued at that price into the beginning of the following year.

Shortly after the Steel Corporation was organized, the price of beams was raised to $1.60 per hundredweight, and continued for about ten or eleven months thereafter at a flat price, without change.

Taking the whole period subsequent to the organization of the Steel Corporation, the price of beams shows, with the

exception of four periods, a remarkable steadiness. Although, apart from these four periods referred to, the prices were sometimes changed, they were generally either $1.60 per hundredweight or $1.70 per hundredweight, and often such price, as the case might be, was maintained for over a year at a time.

A striking instance is found in the period from September, 1905, to May, 1908, a period of about two years and three-quarters, when the prices remained at a level of about $1.70 a hundredweight, without change. There were four periods in which there were marked breaks in the price of beams. The first was chiefly in the latter part of 1902, when the market was so strong that the price of beams was pushed up above the quotation which had been established at that time by the makers, of $1.60; but it was resumed when the excessive demand of that period subsided.

Another break occurred in 1904, which was a period of considerable depression in the iron trade. Another break occurred in 1909, following the public declaration of the iron and steel makers that they were going to have an open market in iron and steel products.

Q. Was there such a declaration, that you know of?

A. There was such a declaration, widely published.

Q. Published how?

A. Given out by the makers themselves to the press, and that appears also in documents that were published by some of the companies.

They gave out notice that they were going to have an open market, and they printed speeches and remarks about what they were going to do.

MR. LINDABURY: I object to that evidence as not the best evidence. If there are any publications of that kind that are evidential, we should have them, and not this witness's garbled account of them.

MR. SEVERANCE: There is an additional objection, it seems to me, that in any event they would be purely hearsay, as the witness, even, does not connect the defendants with such statements or publications.

THE WITNESS: I have been told so by persons in the iron and steel industry, persons who were at these meetings.

MR. DICKINSON: No,——

MR. SEVERANCE: Yes; that is first rate. Let him say that he got this by hearsay. That shows it.

THE WITNESS (Continuing): Persons that said so. Persons that did this.

MR. SEVERANCE: That is first rate.

MR. LINDABURY: I think it is second rate.

By MR. DICKINSON:

Q. You spoke of publications. Did you see those publications?

A. These notices were given out to the press and published in the trade journals and the public press, and some of the remarks in connection therewith were handed out by the people who made these declarations.

MR. LINDABURY: I object to that answer as not responsive to the question.

MR. DICKINSON: We do not insist on that part of the answer in which he speaks of the announcements in the trade journals and consent to that being stricken out.

MR. COLTON: At what date did that fall begin?

THE WITNESS: In this diagram it is shown that the break occurs in February, 1909. That was the period, just about the time, in which this declaration of the open market was made public.

By MR. DICKINSON:

Q. What year?

A. February, 1909.

MR. LINDABURY: I object to that answer because it either assumes a condition not proven, or, if it is intended to state a fact, it is based upon hearsay.

MR. DICKINSON: We have proven that fact.

MR. LINDABURY: The declaration?

MR. DICKINSON: Not the declaration, but the fact that there was an announcement as to the open market.

MR. LINDABURY: How did you prove it?

MR. DICKINSON: By Judge Gary—an announcement that he made.

MR. LINDABURY: How did you prove it?

MR. DICKINSON: By witnesses. Several of them; two, anyway.

MR. LINDABURY: Are you alluding to the remarks made by Judge Gary at the Gary dinner?

MR. DICKINSON: No; not at the Gary dinners; on February 18, 1909, that the market would, in effect, be open; that his hands would no longer be tied. That is the expression that we have proven.

MR. LINDABURY: I certainly do not recall it.

MR. COLTON: That was testified to by Mr. King and Mr. Worth, and it is in the Carnegie minutes also.

MR. LINDABURY: I do not know anything about the Carnegie minutes; I have not read those; but I do not remember such testimony by either Mr. King or Mr. Worth.

MR. DICKINSON: Yes; by both of them.

MR. LINDABURY: Do you remember that, Mr. Severance?

MR. SEVERANCE: I do not recall the announcement.

MR. LINDABURY: Well, our objection goes.

MR. SEVERANCE: It will show if it is there.

MR. DICKINSON: It is there.

MR. LINDABURY: Mr. Reed does not remember it, either, and I do not.

By MR. DICKINSON:

Q. Go on with your answer, Doctor. What is the date of the other break shown there?

A. The fourth break in the market price mentioned previously was in May, 1911, when prices of beams fell very rapidly, namely, from $1.40 cents per hundredweight in May, 1911, to $1.12 or thereabouts in November, 1911. This sudden drop in prices followed a disagreement among——

Q. If you do not know about the disagreement do not mention that.

MR. SEVERANCE: He knows that as well as these other things.

MR. DICKINSON: I object to the comment of counsel reflecting on the witness and the character of his testimony. It is not an exception. It is simply a criticism of the witness, and I object to it as improper.

THE WITNESS: Between these two periods, however, stable

prices for beams were maintained for a considerable length of time, particularly in the last part of 1910 and the first five months of 1911, during which time the price was $1.40 per hundredweight.

By Mr. Dickinson:

Q. Please refer to the same diagram and Government Exhibit and explain the curve for plates as to competitive conditions.

A. Taking first the price movement of plates prior to the organization of the Steel Corporation it will be seen that the prices changed almost every month, and showed a remarkably wide variation. The extreme fluctuation was from about $1.00 per hundredweight in the middle of 1897 to about $2.85 per hundredweight in September, 1899. While the price of plates during the year 1899 went up very much higher than the price of beams, during 1900 the price of plates fell to a very much lower point than the price of beams, although they both started from approximately the same point in 1898.

Shortly after the Steel Corporation was formed, the price of plates had advanced to about $1.60 per hundredweight, namely, in June, 1901, and the price continued without change at that point for nearly a year.

Taking the price of plates for the whole period since the formation of the United States Steel Corporation, it will be found that there are several periods of a year or more in duration in which there was no change whatever in the price of plates.

Except for the four breaks in the market, the price of plates was generally maintained at either $1.60 per hundredweight or $1.70 per hundredweight; usually at the same level as beams, though not invariably.

The four breaks that occurred in the price of plates corresponded quite closely to the breaks that occurred in the price of beams, due to exactly the same reasons.

Mr. Lindabury: I object to that answer and move to strike it out, upon the ground that the opinion of the witness on that subject is not evidential, the matter is not one calling for expert evidence, and his views about the influences that caused the condition are irrelevant and improper.

MR. SEVERANCE: There is another thing about about this last answer. He says this was most of the time. As a matter of fact, it was not half of the time.

MR. DICKINSON: Do you put that in as an exception?

MR. SEVERANCE: I wish to object on the further ground that the witness's statement as to the prices is absolutely contradicted by the diagram itself that he is looking at.

MR. DICKINSON: In what respect?

MR. SEVERANCE: He said most of the time it ran at $1.60 and $1.70, except for the occasional four breaks.

By MR. DICKINSON:

Q. Do you hear the objection made? Do you understand it?

A. Excluding the four breaks you mean to say it did not run at that price, or that including them it did not?

MR. SEVERANCE: You said most of the time it ran at that price, except in the case of the four breaks.

THE WITNESS: I excepted the four breaks.

MR. SEVERANCE: But the four breaks are bigger than the most of the time.

THE WITNESS: I can give the number of months.

MR. SEVERANCE: The diagram shows for itself.

MR. DICKINSON: I want to get back to Mr. Lindabury's objection. Does that objection go to the whole answer of the witness?

MR. LINDABURY: No. It goes to the opinion which he expressed as to the causes producing the result to which he alluded.

MR. DICKINSON: And not to the balance of the answer?

MR. LINDABURY: No.

MR. DICKINSON: All right.

I want to enter an exception to the form of the last objection by Mr. Severance, not being an objection to the competency or relevancy on any of the well-known grounds, but merely a contradiction asserted by him as to what the witness was testifying to.

MR. SEVERANCE: I put it in that way to call the attention

of the witness to the fact that when he said most of the time it had been at one of those figures or the other, he was mistaken.

MR. DICKINSON: That is not the form of an exception.

By MR. DICKINSON:

Q. Now, Doctor, answer more fully than you have just what the constant periods and what the break periods were.

A. The periods at which the prices, for several months at a time, remained either at $1.60 or $1.70 per hundredweight, constituted more than half of the total number of months indicated.

MR. SEVERANCE: Give the number. You have it right there in front of you.

MR. LINDABURY: Give the number of each.

THE WITNESS: I cannot say exactly how long, because these seventy-four months represent less than the total.

MR. SEVERANCE: How is that?

THE WITNESS: This is less than the total, because if you take in the actual period of time, it would be a little more than that rather than less, and——

MR. SEVERANCE: Kindly give the figures that you made right there.

THE WITNESS: I will state that the price was more than half the time either at one or the other of those two prices.

MR. SEVERANCE: I have called the attention of the witness to the fact that he has figured it out right here, and I have asked him to give the figures that he made.

THE WITNESS: I made figures here which may be correct or not—I have not had an opportunity to check them—amounting to 140 months, for the whole period under consideration, and for 74 months for the period called for by the question. But I said that the period of 74 months does not represent the whole number of months for which the prices were maintained at a steady level at the points mentioned.

MR. LINDABURY: You do not mean they were consecutively maintained in that way?

THE WITNESS: No; but for long periods of time.

The point is simply this, if I may explain: That some-

times the break occurs when a part of the month is constant at that level, and it does not appear on the diagram.

MR. SEVERANCE: The diagram shows the fact, does it not? That shows the needlessness of this testimony. The diagram can be figured out by anybody.

MR. DICKINSON: I object to that as a comment.

MR. SEVERANCE: I will strike it out.

MR. DICKINSON: No. Let us have it in.

MR. SEVERANCE: Leave it in, then. I thought you wanted it out.

MR. DICKINSON: No; I do not want it out. I want to show the character of comments indulged in by counsel to witnesses, where there are no exceptions in the legal form, but simply direct attacks upon the witness.

MR. SEVERANCE: I have not attacked the witness.

MR. DICKINSON: They are unsuccessful, but I think they are calculated to improperly influence the witness.

MR. SEVERANCE: If you do not want it stricken out, I am glad to have it in.

MR. DICKINSON: Now proceed, Doctor.

MR. SEVERANCE: I simply pointed out the question as to whether most of the time it was at those levels.

THE WITNESS: I think I have completed my answer to that.

By MR. DICKINSON:

Q. Then refer to diagram No. 4, the same Government Exhibit, and explain the curve of steel bars, and what it shows as to competitive conditions and prices.

MR. LINDABURY: I object to that question as calling for the opinion or speculation of the witness with regard to the inferences to be drawn from the fluctuation or non-fluctuation in the quoted prices of steel bars, it being not a question that admits of expert testimony, and this witness not appearing to be an expert on that question, if it does admit of expert testimony.

THE WITNESS: Taking the period before the formation of the United States Steel Corporation, the price of bars, with the exception of one period, shows indications of competitive regulation of prices, inasmuch as the price fluctuates gen-

erally from month to month. The only period during which the prices appear to have been held by artificial control, was at the end of 1899 and the beginning of 1900, when the price of bars did not decline as quickly as other products, which were evidently subject to competitive regulations. After the United States Steel Corporation was formed the price of bars was, for several months, irregular, though it showed a great advance over what it had been in the latter part of 1900.

MR. SEVERANCE: Do you not want to comment upon that—that it was much lower in 1899? (Indicating diagram.)

MR. DICKINSON: One minute. I object to your interrupting the answer of the witness.

MR. SEVERANCE: It is manifestly unfair.

MR. DICKINSON: I do not think counsel has a right, when a witness is answering my question, to ask whether he wants to comment on something else, and I object to that as an interruption of my examination of my witness.

MR. SEVERANCE: Pardon me. I thought you wanted to be fair about this—

MR. DICKINSON: You can ask him on cross examination anything you want.

MR. SEVERANCE: He has been asked about what is shown on this diagram. Now he starts in by talking about what is shown by the way the line runs, as to its being level or otherwise; and then he interpolates a suggestion that after the corporation was organized the price was higher than it had been in 1900, omitting to call attention to the fact that it was very much lower than it was in 1899.

MR. DICKINSON: You can call attention to that on cross examination.

MR. SEVERANCE: But you asked him to explain that line.

MR. DICKINSON: If he does not explain it to your satisfaction, you can cross examine him on it later, when your turn comes.

MR. SEVERANCE: Don't you want him to be fair?

MR. DICKINSON: I want him to be fair, but I want him to go on uninterrupted, and you shall have the field for cross examination; but I do not think you have a right to interrupt

my witness when he is answering my questions, by asking him something else.

MR. SEVERANCE: I beg your pardon. I shall not do it again.

MR. DICKINSON: I am glad to know that, because it has been done pretty frequently.

MR. SEVERANCE: Let the witness run along, and be as unfair as he pleases. I shall say nothing more about it.

MR. DICKINSON: I object to that comment, in the presence of the witness.

MR. SEVERANCE: I thought you would like to have it pointed out.

MR. DICKINSON: No. There is a good deal that I do not like about what has been done; and if my feelings are consulted, I want to express it directly that I do not like it. I do not think it is proper.

THE WITNESS: Would you like to have me take up that point, Judge?

MR. DICKINSON: Take it up if you want to. I do not object to it. I want you to be full and comprehensive and fair. Just as fair to the defendant as you are to the complainant.

THE WITNESS: Another evidence of the fact that in 1899 and 1900 the price of bars was generally controlled by competitive conditions, is found in the circumstance that in August, 1899, the price of bars had reached a very high level, namely about $2.45 per hundredweight, which was an extraordinarily high price and that by the latter part of 1900, namely in August, 1900, or just a year later, the price of bars had fallen to only $1.05 per hundredweight or thereabouts; falling, in fact, to almost as low a point as it had reached throughout the entire period under consideration.

The indications, therefore, in regard to bars, are that for most of the period from 1895 to 1900 the prices were controlled by competitive conditions, this extreme fluctuation being a marked evidence of that fact.

Taking, now, the period following the organization of the Steel Corporation,—

MR. LINDABURY: Before you go further, I want to note an objection to the opinion just expressed by the witness with

regard to the indications of the diagram, and the fluctuation with respect to competitive or non-competitive conditions; and the grounds for it are those that have been already stated,—that it is not a question for expert testimony, and the witness is not an expert, anyhow, upon the subject.

THE WITNESS: Comparing, next, the prices subsequent to the formation of the United States Steel Corporation, a marked difference appears in the character of the curve. Although there are four periods where the price of bars fluctuated considerably, there are, on the other hand, several periods of a year or more, in which bars were kept on an absolutely flat price. One of these periods was from March, 1902, to October, 1903, a period of about 20 months.

Another period was from July, 1905 to October, 1906, a period of about 16 months.

MR. LINDABURY: Fifteen months, is it not?

THE WITNESS: I think it is sixteen.

MR. LINDABURY: Oh, you count both ends?

THE WITNESS: Another period was from December, 1906 to May, 1908, a period of about eighteen months. There were four periods, as I stated, in which the price of bars fluctuated considerably, although there were also other periods when for less than a year at a time the price remained constant, sometimes as much as six months. The periods of fluctuating prices were chiefly in the year 1901, when they were advancing generally; in the year 1903, which was a year of extreme depression; in the year 1909, beginning in February, 1909, and extending until near the end of the year; and, again, in 1911, when the prices broke in May of that year.

By MR. DICKINSON:

Q. I think you gave one period there as eighteen months.

A. Yes.

Q. What was that? State whether or not you answered that correctly.

A. The period from December, 1906 to May, 1908. That is a period of eighteen months. It includes both months.

Q. Explain how you count those months.

A. The price is shown by the point marked on the diagram. The line simply connects the points, to enable the eye to see with greater facility where the lines run or where the points are. The points are the prices, the average prices for that month. It does not make any difference whether they are placed in the middle of the space or whether a part of it slants off, or whether it slants up or down; it indicates the month.

Q. When you gave the period of eighteen months, is that correct, according to that diagram?

A. That is correct. If there is any error in the reading of the diagram, it can be detected from an examination of the tables.

Q. Please refer to the same diagram, and answer the same question in regard to the curve for sheets.

MR. LINDABURY: The same objection as was made to the similar question with respect to steel bars.

A. The price curve for sheets shows very marked differences with the curves for the products heretofore described. For the four years 1895 to 1898 the price curve of sheets was one which fluctuated almost without exception from month to month, and shows every indication of a competitive market, the general movement of the line being parallel to the movements of lines of other products in which competitive influences were predominant in pricemaking.

In 1899 the price of sheets advanced very markedly, as it did for practically all iron and steel products for that year, due to the boom of world-wide charcater in the iron and steel trade, and to the marked influence of the great consolidations made at that time on the market.

In the latter part of 1899 the price of sheets began to decline, but they suddenly recovered at the beginning of 1900 and went up again. Another decline occurred after May, 1900, but it did not extend very far. The price of sheets in 1899 and in 1900 had reached very high points, namely about 3.15, per hundredweight in September, 1899 and in May 1900. When the price of sheets did decline in the latter part

of 1900, it did not go down very far, like the prices of products which were under competitive market influences—

MR. LINDABURY: I object to that answer, and move to strike it out.

A. (Continuing) They declined from about $3.15 per hundredweight to about $2.80 per hundredweight. During this year a very comprehensive combination was formed among the sheet steel producers, the American Sheet Steel Company, which had a monopolistic influence in the market, and explains the fact that the price of sheets remained at a very high level at the end of 1900, compared with most other iron and steel products, and particularly those which were controlled by competitive conditions.

MR. LINDABURY: I move to strike that answer out as being a mere speculation of the witness, based upon no information which he acquired through contact with the trade, and as an opinion, anyhow, given in answer to a non-expert question.

A. (Continuing) Taking the period after the formation of the Steel Corporation, the price of sheets shows further singularities. The price of sheets in 1901 reached even higher levels than had been attained in 1899 and 1900, reaching a figure of more than $3.50 per hundredweight. This is a very unusual feature of the sheet steel prices, inasmuch as for almost every important product the prices were much lower, relatively, in 1901 than in 1899 and 1900.

The price of sheets remained very high also in 1902, but in the following years a decided decline took place, due to the increase of competition in this branch of the trade.

MR. LINDABURY: I object to the answer, and move to strike it out as irrelevant, incompetent and immaterial, and a mere speculation of the witness, based upon no knowledge, and upon no testimony in the case.

By MR. DICKINSON:

Q Would you or not say from the facts as shown by the sheet, assuming them to be facts, that they would indicate competitive conditions?

MR. LINDABURY: Objected to as leading.

MR. DICKINSON: I mean that particular period you have spoken of there.

MR. LINDABURY: Objected to as leading.

A. For that particular period——

MR. DICKINSON: (Interposing) The period you have just spoken of, in which you spoke of competitive conditions.

MR. LINDABURY: That is, since the Steel Corporation——

MR. DICKINSON: Let the question be read!

(The question was repeated by the stenographer).

THE WITNESS: The years referred to are 1903 and 1904.

By MR. DICKINSON:

Q. Referring to 1903 and 1904, as to those years, assuming the diagram is correct and true, state what in your judgment that would indicate as to competitive conditions.

MR. LINDABURY: We object to that upon the same ground as already stated with regard to other portions of the testimony.

By MR. DICKINSON:

Q. Now answer that question.

A. The indications as to the existence of competitive conditions furnished by the diagram alone are not positive. They corroborate, however, the known conditions in the trade at the time.

MR. LINDABURY: I object to the latter part of the answer as irrelevant, and move to strike it out.

By MR. DICKINSON:

Q. What does the diagram indicate, assuming it to be correct, upon that point?

MR. LINDABURY: Objected to, for the reason stated.

A. It indicates merely a rapidly changing price.

MR. LINDABURY: There is no objection to that, if that appears on the face of it, I suppose.

By Mr. Dickinson:

Q. Proceed with your answer.

A. For the following year, namely 1905, the influence of competition was important in the sheet trade; and the prices fluctuated accordingly.

Mr. Severance: Are you stating that from the diagram, or from some independent source of information? I think the question was as to what the diagram showed.

The Witness: The diagram alone indicates that.

Mr Severance: You were answering from the indications on the diagram alone?

The Witness: I will answer it that way——

Mr. Dickinson: Let the answer be read, please.

(The answer of the witness was repeated by the stenographer as above recorded).

By Mr. Dickinson:

Q. The question put to you was as to the diagram. Is your answer based on the diagram?

A. That would be based on the diagram.

Mr. Lindabury: I object to the answer as an opinion of the witness with regard to the occasion of the fluctuation of prices, it being a subject upon which he has not been shown to have knowledge, and with respect to which his opinion is not evidential.

By Mr. Dickinson:

Q. Have you studied the question of prices?

A. During a considerable part of my work in the Bureau of Corporations, my work has been to examine prices and study relations to the conditions of the business.

Q. The general market conditions?

A. Both the general market conditions and interpretation of prices.

Q. In the iron and steel industry?

A. Particularly in the iron and steel industry, for which these charts and diagrams were prepared, and also for several other industries.

Q. How long a period does that study comprehend?

A. In respect to these prices, I spent perhaps two years; at least, a year and a half, in working upon that particular branch of the subject; but about three years on the iron and steel business as a whole.

Q. Did your study cover the question of costs also?

A. Yes, sir.

Q. What were your sources of information as to prices and costs?

A. In connection with the investigation of the steel industry, the Bureau had access to information regarding the prices shown on the books of the companies, to a considerable extent, and we had very elaborate and comprehensive statements of the costs of production furnished by the companies themselves, and especially by the Steel Corporation, covering for many products fifteen years, and for many other products a shorter period.

MR. LINDABURY: You did not put those on these charts, I believe?

THE WITNESS: Put what?

MR. LINDABURY: Those costs; you did not use them, if I recollect rightly, but you got this from the "Iron Age" and other publications?

THE WITNESS: These are quoted prices.

By MR. DICKINSON:

Q. I think you were interrupted in regard to what you were saying about the years 1903 and 1904. Have you finished your answer in regard to that?

A. No.

Q. Please proceed with that.

A. Subsequent to the middle of 1906, there were several periods during which the price of sheets remained constant for a considerable number of months at a time. The two most important periods of this character were from November, 1906 to December, 1907, inclusive, a period of fourteen months. Again, from February, 1908 to February, 1909, a period of thirteen months.

Q. During that period how many changes were shown there?

A. For the two periods just mentioned, the price remained unchanged during each period. In the former case the price was $2.50, and in the latter case, $2.40 per hundredweight.

Q. What was the state of the market in February, 1909?

A. In February, 1909, or immediately thereafter, the price of sheets broke markedly, and fell from $2.40 per hundredweight to about $2.15 per hundredweight, in the course of about two months.

Q. How was it in May, 1911?

A. In May, 1911, the average price of sheets was $2.15 per hundredweight, and thereafter it broke suddenly, and by October, 1911, had fallen to $1.80 per hundredweight.

Q. Between those periods, how was it?

A. Between the two dates, February 18, 1909 and May, 1911, there were several changes in the price of sheets, but for one period, at least, the price of sheets remained constant for a period of six months.

Q. Now, refer to the same diagram, diagram No. 6, Government Exhibit No. 248, and explain the curve for tin plate, and what the diagram indicates as to competitive prices.

MR. SEVERANCE: The same objection is made to that question as to the preceding question in regard to sheets.

A. The price curve for tin plate begins with December, 1895, as does the table, because the quotations were not available before that time. During the first three years covered by the diagram, 1896, 1897 and 1898, the price of tin plate fluctuated almost constantly from month to month, and gives positive indications of a competitive regulation of prices.

MR. LINDABURY: Objected to, on the ground that the answer is simply a speculation, and because it is not expert testimony, it is not in regard to a subject that admits of expert testimony.

By MR. DICKINSON:

Q. Go on with your answer.

A. The price of tin plate rose very rapidly in the beginning of 1899, like most other iron and steel products. In this connection it should be noted that the American Tin Plate Com-

pany had been formed at just the end of the preceding year, and had acquired a monopolistic power in the tin plate trade.

MR. LINDABURY: I object to that as expressing an opinion of a witness in regard to a matter which he knows nothing about, has had no experience about, and because it is non-expert in character.

A. The price of tin plate——

By MR. DICKINSON:

Q. I will interrupt you there to ask if you know what concerns were acquired by the American Tin Plate Company and brought under one control.

A. I have examined carefully the record as to what concerns were comprehended in that organization, and have studied in that connection the authoritative source of the American Iron and Steel Trade Directory, showing the number of concerns that made tin plate at that time, and found that most of the important concerns were included in that organization.

Q. Well, go on with your answer.

A. The price of tin plate in 1899 reached a very high level, rising from about $3.00 per base box in October, 1898 to over $4.80 per base box in September, 1899. The price remained at that level, without change or without substantial change, until September of the following year, a period of thirteen months.

MR. LINDABURY: You are apparently including both ends, and wrongly so as I thought when you were answering a while ago, and this table shows that. In September, the price was markedly different. So you have it wrong at both ends, as this table will show.

THE WITNESS: I counted the months wrong. I will correct that.

MR. LINDABURY: I think you made a mistake awhile ago.

MR. DICKINSON: In regard to which one do you mean?

MR. LINDABURY: I do not know. It was some time ago.

By MR. DICKINSON:

Q. You may make any correction you desire to make.

A. The price remained at about the same level, and over $4.80. That is the way I expressed it. I could not say exactly the amount, from this diagram. As a matter of fact, the variation was from $4.83 to $4.84, as shown in the table, and the period was twelve months. There is a difference of one cent in that quotation.

In the latter part of 1900 the price of tin plate fell off, but not very markedly, declining from a little over $4.80 per base box to about $4.20 per base box.

MR. LINDABURY: You have not the exact figure?

THE WITNESS: No, sir. I said "about."

By MR. DICKINSON:

Q. Your diagram does not show the exact figures on the face of it?

A. No. I can tell within five cents.

Q. So you say "about?"

A. Yes, about. The price remained at this level, namely $4.20 per base box, from October, 1900, to October, 1902, a period of about two years without change. During the period since the organization of the Steel Corporation, including the greater part of the two-year period just mentioned, the price of tin plate has not shown very wide fluctuations in absolute level, the maximum range being from about $3.50 per base box to about $4.20 per base box. This fluctuation may be compared with the fluctuation in 1898 and 1899, from about $2.80 per base box to about $4.80 per base box. Moreover, during this period——

MR. SEVERANCE: (Interrupting) I do not understand that last statement.

(The last part of the answer was repeated by the stenographer as above recorded).

By MR. DICKINSON:

Q. Compared in what respect do you mean?

A. The range in the latter period was comparatively small, placed beside the earlier period, a period of less than a year.

MR. LINDABURY: Which period was the later period?

THE WITNESS: The period since the formation of the Steel

Corporation. The prices during this period were often kept at a constant level for more than a year at a time. Such periods are found between November, 1906 and December, 1907; between February, 1908 and February, 1909; and between December, 1909 and January, 1911.

MR. LINDABURY: We object to the characterization by the witness of these prices as having been "kept," if he means that they did not rule naturally, but had been kept by some artificial means. If he simply means that they remained in that way, the objection goes for nothing; but as we understand it, he means it to be understood that they had been artificially kept. To that implication of opinion on his part, we object.

By MR. DICKINSON:

Q. State whether you are referring to the constant figure shown on the diagram, or whether you are referring to that as indicating control and non-competitive conditions. Explain in what sense you used the word "kept." Both sides want to know what you meant.

A. In reference to the periods to which I referred, in which the prices remained constant for a considerable length of time, I meant to be understood as saying, when I used the word "kept," that this was a positive indication that the prices were fixed by artificial conditions.

MR. LINDABURY: I move to strike out that answer, upon the ground that it merely expresses the opinion of the witness upon a non-expert question, and a question with respect to which he is not an expert.

(At this point the examination of this witness was suspended).

MR. DICKINSON: I want to give notice to opposing counsel that at the time when they propose to take up the question before the Court in Philadelphia, that we will also take up the question of objections that are made to the testimony.

MR. LINDABURY: Yes. We should be glad to debate the general conduct of the case.

(Thereupon, an adjournment was taken until Thursday, November 21, 1912, at 10:30 o'clock a. m.)

THIRTY-THIRD DAY.

COMMERCE COURT ROOM, SOUTHERN BUILDING,
WASHINGTON, D. C.,

Wednesday, November 20, 1912.

The hearing was resumed at 10:30 o'clock a. m., before SPECIAL EXAMINER JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON, MR. COLTON and MR. CORNEAU.

Present on behalf of the defendant, MR. LINDABURY, MR. SEVERANCE and MR. REED.

MR. LINDABURY: We learned last evening, after adjournment, that the Court is not in session in Philadelphia, but has adjourned to a date which we have not been able to learn.

EXAMINER BROWN: December 2nd.

MR. LINDABURY: Therefore we will necessarily be obliged to postpone our motion over there until the Court reconvenes, and on that account we have consented to return here this morning and go on.

DR. FRANCIS WALKER

the witness under examination at the taking of adjournment, resumed the stand for further

DIRECT EXAMINATION, (Continued)

By MR. DICKINSON:

Q. Referring to table 31, Government Exhibit No. 237, showing average prices before and after the formation of the Steel Corporation, to wit, Jan. 1, 1895 to Mar. 31, 1901, and from April 1, 1901, to February 18, 1909, state what it shows in general as to the differences in prices.

A. It shows for each of the products indicated on the table that there was a marked advance in the prices in the second

period as compared with the first period. I will modify that and say for most of the products.

Q. Referring particularly to ore, what does it show?

A. That in the first of the said periods the average price of ore was $2.89 a ton, and for the second $3.75 a ton. The increase was 86 cents per ton or a percentage increase of 29.8 per cent.

Q. You say ore. What kind of ore? Do you mean Mesabi Bessemer?

A. Mesabi Bessemer ore.

Q. For what markets or points are those prices quoted?

A. For lower Lake ports.

Q. Deducting transportation charges to such markets, what, approximately, would be the difference in the price of ore at the mine?

A. Deducting the transportation charges from the mine to lower Lake ports, the estimated mine price for the two said periods would be $1.30 per ton and $2.20 per ton, respectively, showing an increase of 90 cents per ton, or a percentage increase of 69.2 per cent.

Q. What effect, if any, have those advances in ore had upon the prices of iron and steel products?

A. This advance in the price of ore has had a great influence upon the prices of iron and steel products.

Q. I will ask you whether or not you have made a special study of the cost of iron and steel products, for this investigation?

A. Yes. I have examined the cost sheets of many companies and many products, as well as other sources of information.

Q. What were the average prices of Bessemer iron for the periods of 1895 to April 1, 1901, and April 1, 1901, to February 18, 1909?

A. For the first of said periods the average price was $13.83 per ton, and for the second of these periods the average price was $18.11 a ton.

Q. What increase would that show?

A. The increase was $4.28 a ton, comparing the two periods, or a percentage increase of 30.9 per cent.

Q. Answer the same question in respect to billets.

A. The average price of billets for the first of said periods was $20.35 per ton, and for the second of said periods was $26.58 per ton, showing an increase of $6.23 per ton, or a percentage increase of 30.6 per cent.

Q. Answer the same question with respect to rails?

A. The average price of rails for the first of the said periods was $24.90 and for the second of said periods was $27.98. The increase was $3.08 per ton, or a percentage increase of 12.4 per cent.

Q. Answer the same question with regard to beams?

A. The average price of beams for the first of said periods was $33.77 and for the second of said periods $37.08, showing an increase of $3.31 per ton, or a percentage increase of 9.8 per cent.

Q. Answer the same question with regard to plates.

A. The average price of plates for the first of said periods was $31.89 a ton, and for the second of said periods $36.39 per ton, showing an increase of $4.50 per ton, or a percentage increase of 14.1 per cent.

Q. Answer the same question in regard to bars.

A. The average price of bars for the first of said periods was $28.43 per ton and for the second of the said periods $33.62 per ton; an increase of $5.19 per ton, or a percentage increase of 18.3 per cent.

Q. Is that steel bars?

A. Those are steel bars.

Q. Answer the same question in regard to sheets?

A. The average price of sheets for the first of the said periods was $52.72 per ton, and for the second of said periods $56.04 a ton; an increase of $3.32 a ton, or a percentage increase of 6.3 per cent.

Q. Answer the same question with regard to wire.

A. The average price of wire for the first of the two periods was $35.99, and for the second of the said periods was $41.19, showing an increase of $5.20 a ton, or a percentage increase of 14.4 per cent.

Q. Answer the same question with regard to tin plates.

A. The first period for which the prices of tin plate are

averaged does not extend over the whole period indicated, but begins, as already noted previously, with December, 1895. Taking that period as far as it extends, the average price of tin plate for the first of the said periods was $82.77 per ton; for the second of the said periods, $87.73 per ton, an increase of $4.96 per ton, or a percentage increase of six per cent.

Q. Referring to Table 31 (Government Exhibit No. 237) and Diagram 7, (Government Exhibit No. 249) what, in general, was the relation between the prices of iron and steel products for the periods from 1895 to April, 1901, and from April, 1901 to February 18, 1909?

A. Taking the following products, namely Bessemer pig iron, foundry pig iron, Bessemer billets, steel rails, beams, tank plates, steel bars, black sheets, plain smooth wire and wire nails——

MR. REED: Is that foundry pig at Pittsburgh?

THE WITNESS: Foundry pig No. 2 at Cincinnati.

MR. REED: Southern foundry pig?

THE WITNESS: Yes.

Taking the said products and combining them for the said periods, that is to say, for the first period from the 1st of January, 1895 to the 31st of March, 1901, and for the second period, from the 1st of April, 1901 to February 18, 1909, the average price for the second period was markedly higher than for the first period, the figures being as follows.

The average price for the first period was $29.72 per ton; for the second period, $33.77 per ton, an increase of $4.05 per ton, or a percentage increase of 13.6.

MR LINDABURY: What product is that?

THE WITNESS: Those are all those products that I enumerated. They are combined in this average.

MR. LINDABURY: I see.

By MR. DICKINSON:

Q. Have you made a comparison of the average prices for other products than the foregoing, and if so, what?

A. Comparisons were made of prices before and after the so-called era of consolidation.

Q. How do you designate that? The period before would be between what dates?

A. Taking the period before as January 1, 1895 to December 31, 1898, and the period after the era of consolidation from January 1, 1899 to various dates for which the averages were compiled, but including down to the end of 1911, in some averages that were made.

Q. For what purpose did you make those comparisons?

A. I made those comparisons in the regular course of the Bureau's investigation into the iron and steel industry.

Q. State what reason you had for taking the beginning of 1899 as the dividing line for this comparison.

A. The beginning of 1899 marked a critical point in the history of the iron and steel industry of the United States, because just before the beginning of that year, or shortly after, a number of very large consolidations were made, some in particular products, such as tin plate, tubes, wire, bars, hoops and some others which in each case embraced the greater part, and sometimes a very large part of the total production of the country. Other consolidations were made in heavy steel products which, while they were not so comprehensive, nevertheless greatly concentrated the control of the industry in a few big consolidations. Both those forms of consolidation had an important influence on the market conditions and the price-making conditions.

Q. You made these statements so as to contrast the periods following that, and the one preceding it?

A. The period prior to that date—— of course the exact date, January 1, 1899, is arbitrary; it would make no difference whether you took it a few weeks before or a few weeks after; but it is a fair date to take —— prior to that period, or at least not long before that date, the Tin Plate Company was formed. Just at the end of 1898, in the autumn there were a few important consolidations. After that date there were these consolidations to which I have alluded, and later, of course, the Steel Corporation itself combined most of the consolidations referred to into a single consolidation.

Q. Referring to Table 33, (Government Exhibit No. 239) please state, for the following products severally, the average

prices for the two periods which you have just described, to wit, 1895 to 1898, inclusive, and 1899 to February 18, 1909, inclusive; and state also, the percentages of increase or decrease for these two periods, the articles being: Mesabi Bessemer iron ore, Connellsville coke, Bessemer pig iron, foundry pig iron, billets, rails, beams, plates, bars, sheets, wire, wire nails and tin plate.

A. For the said periods the respective prices, their respective increases and percentage of increase, were as follows:

Mesabi Bessemer ore for the first of said periods, $2.59 per ton; for the second of said periods, $3.67 per ton; increase $1.08 per ton; percentage increase 41.7 per cent.

Connellsville furnace coke: For the first period the average price was $1.71 per ton; for the second of said periods, $2.74 per ton; increase, $1.03 per ton; per cent increase 60.2 per cent.

Bessemer pig iron: Average price for the first of said periods, $11.24 per ton; for the second of said periods, $18.18 per ton; increase, $6.94 per ton; per cent increase, 61.7 per cent.

Southern foundry iron: Average price for the first of said periods, $9.93 per ton; average price for the second of said periods, $16.85 per ton; increase, $6.92 per ton; per cent increase, 69.7.

Bessemer billets: Average price for the first of said periods, $16.79; average price for the second of said periods, $26.60 per ton; increase, $9.81 per ton; per cent increase, 58.4 per cent.

Steel rails: Average price for the first of said periods, $22.18 per ton; average price for the second of said periods, $28.37 per ton; increase, $6.19 per ton; per cent increase, 27.9 per cent.

Beams: Average price for the first of said periods, $29.81 per ton; average price for the second of said periods, $37.91 per ton; increase, $8.10; per cent increase, 27.2 per cent.

Tank plates: Average price for the first of said periods, $26.85 per ton; average price for the second of said periods, $37.38 per ton; increase, $10.53 per ton; per cent increase, 39.2 per cent.

Steel bars: Average price for the first of said periods, $23.31 per ton; average price for the second of said periods, $34.48 per ton; increase, $11.17 per ton; per cent increase, 47.9 per cent.

Black sheets: Average price for the first of said periods, $46.79; average price for the second of said periods, $57.64; increase, $10.85; per cent increase, 23.2 per cent.

Plain smooth wire: Average price for the first of said periods, $27.34; average price for the second of said periods, $43.45; increase, $16.11; per cent increase, 58.9 per cent.

Wire nails: Average price for the first of said periods, $37.03 per ton; average price for the second of said periods, $45.94; increase, $8.91 per ton; per cent increase, 24.1 per cent.

Tin plates: Here again the tin plate average begins with December 1, 1895, instead of January 1, 1895, as explained before. Average price for the first of said periods, $70.71 per ton; average price for the second of said periods, $90.29; increase, $19.58; per cent increase, 27.7 per cent.

Q. How about all iron and steel—— the average?

A. Taking the average of all iron and steel, namely, Bessemer iron, foundry iron, billets, rails, beams, plates, steel bars, sheet, wire and wire nails, the average price for the first of the said periods was $25.13 and for the second of said periods $34.68; an increase of $9.55, or a percentage increase of 38 per cent.

Q. Take heavy steel.

A. Of the aforesaid products, taking those which were heavy steel products, namely, billets, rails, beams and plates, the average price for the first of the said periods was $23.91; the average price for the second of the said periods was $32.57; an increase of $8.66 per ton or a percentage increase of 36.2 per cent.

Q. Take light steel.

A. Taking the light steel products among the aforesaid products, namely, steel bars, sheets, wire and wire nails, the average price for the first of the said periods was $33.62 per ton and for the second of the said periods was $45.38 per ton; an increase of $11.76 per ton or a percentage increase of 35 per cent.

Q. What, in general, was the relation between the prices of iron and steel products for the period 1895 to 1898, inclusive, and the period 1899 to February 18, 1909, inclusive?

A. The average prices in the second period for those products were markedly higher, and in particular, as shown by the group of all iron and steel products that year mentioned, namely, Bessemer iron, foundry iron, billets, rails, beams, plates, steel bars, sheets, wire and wire nails.

Q. What was the average price for the first period on those per ton?

A. The average price was $25.13 for the first period, as compared with $34.68 for the second period; or an increase of $9.55 per ton, and a percentage increase of 38 per cent.

Q. Have you prepared any tables of the price movements of iron and steel products in foreign countries?

A. I have.

Q. State for what purpose these tables are prepared?

A. I prepared such tables in the regular course of the investigation by the Bureau of Corporations into the steel industry.

Q. Have you a list of those?

A. I have.

Q. Just read the list and let the stenographer take it down.

A. Table 35. Average prices of East Coast hematite (pig iron) at Middlesbrough, England, according to the Iron and Coal Trades Review, 1895-1911, by months (in shillings per gross ton).

Table 36. Average prices of Cleveland pig iron No. 3, at Middlesbrough, England, according to the Iron and Coal Trades Review, 1895-1911, by months, (in shillings per gross ton).

Table 37. Average prices of billets, Lancashire, England, according to the Iron and Coal Trades Review, 1895-1911, by months (in pounds sterling per gross ton).

Table 38. Average prices of heavy steel rails, North of England, according to the Iron and Coal Trades Review, 1895-1911, by months (in pounds sterling per gross ton).

Table 39. Average prices of steel ship angles North of

England, according to the Iron and Coal Trades Review, 1895-1911, by months (in pounds sterling per gross ton).

Table 40. Average prices of steel ship plates North of England, according to the Iron and Coal Trades Review, 1895-1911, by months (in pounds sterling per gross ton).

Table 41. Average prices of steel sheets, South Wales, according to the Iron and Coal Trades Review, 1895-1911, by months (in pounds sterling per gross ton).

Table 42. Average price of basic-Bessemer pig iron in Germany (Rheinland-Westphalia), according to the Stahl und Eisen, 1895-1911, by months (in marks per metric ton).

Table 43. Average prices of foundry iron No. 1 in Germany (Rheinland-Westphalia), according to the Stahl und Eisen, 1895-1911, by months (in marks per metric ton).

Table 44. Average prices of steel billets in Germany, 1895-1911, by months (in marks per metric ton).

Table 45. Average prices of standard steel rails, purchased by the Prussian State railways in Germany, 1895-1911, by months (in marks per metric ton).

Table 46. Average prices of beams in Germany, according to the Stahl und Eisen, 1895-1911, by months (in marks per metric ton).

Table 47. Average prices of steel plates in Germany (Rheinland-Westphalia), according to the Stahl und Eisen, 1895-1911, by quarters (in marks per metric ton).

Table 48. Average prices of steel sheets in Germany (Rheinland-Westphalia), according to the Stahl und Eisen, 1895-1911, by months (in marks per metric ton).

Table 49. Average prices of Bessemer pig iron in England and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 50. Average prices of foundry iron in England and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 51. Average prices of billets in England and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 52. Average prices of heavy steel rails in England

and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 53. Average prices of steel ship angles in England, and of steel beams in the United States, 1895-1911, by months (in dollars per gross ton).

Table 54. Average prices of steel plates in England and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 55. Average prices of steel sheets in England and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 56. Average prices of basic-Bessemer iron in Germany, and acid-Bessemer iron in the United States, 1895-1911, by months (in dollars per gross ton).

Table 57. Average prices of foundry iron in Germany and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 58. Average prices of billets in Germany and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 59. Average prices of rails in Germany and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 60. Average prices of beams in Germany and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 61. Average prices of plates in Germany by quarters, and in the United States by months (in dollars per gross ton), 1895-1911.

Table 62. Average prices of sheets in Germany and in the United States, 1895-1911, by months (in dollars per gross ton).

Table 63. Simple average prices of Bessemer iron, foundry iron, Bessemer billets, steel rails and beams, tank plates and black sheets, in the United States, 1895-1911, inclusive, by months (in dollars per gross ton).

Table 64. Simple average prices of basic Bessemer iron, foundry iron, billets, steel rails, beams, plates and sheets in

Germany, 1895-1911, inclusive, by months (in dollars per gross ton).

Table 65. Simple average prices of Bessemer iron, foundry iron, billets, steel rails, ship angles, ship plates and sheets, in England, 1895-1911, inclusive, by months, (in dollars per gross ton).

MR. DICKINSON: Please produce the tables enumerated in that list which you have just read.

(The Witness produced the tables referred to).

By MR. DICKINSON:

Q. State from what sources you prepared these tables.

A. I examined all available sources of information regarding market prices or prices current in the two countries, England and Germany, and selected the products for which I could make comparisons with similar products in the United States by getting the prices. For England the sources used were the quotations published in the Iron and Coal Trades Review.

Q. State what the publication is and what its character and standing is.

A. This publication is an authoritative journal on the iron and steel trade and the prices of iron and steel products, and the editors of this journal have close and confidential relations with the producers in England and are connected with the work of assembling the statistics of production, confidentially obtained from the different producers, and publishing them in a similar manner to the way in which the Swank reports of the American Iron & Steel Association are published.

MR. LINDABURY: I object to that as hearsay, and move to strike it out.

Q. What is the general reputation of the Journal?

A. The Journal is an authoritative source of information on the market prices of iron and steel products.

Q. Is it so generally accepted?

MR. LINDABURY: I object.

THE WITNESS: Yes, sir.

By Mr. Dickinson:

Q. For Germany, what were your sources of information?

A. For Germany, the principal source of information was the trade journal "Stahl und Eisen." This is an authoritative publication on the iron and steel trade of Germany and on the market prices of iron and steel products. The editor of this journal is in confidential relations with the chief producers in the iron and steel industry of that country and is thoroughly familiar with the whole business and the conditions of the market.

Mr. Lindabury: I object to that answer as hearsay and move to strike it out.

By Mr. Dickinson:

Q. Do you know the reputation of that journal in Germany?

A. Yes, sir; I know the editor also.

Q. I am asking now whether you know the reputation of that journal in Germany in the iron and steel trade.

Mr. Lindabury: I object on the ground that an American cannot know the reputation of a German publication in Germany.

By Mr. Dickinson:

Q. Have you not been in Germany?

A. I have been to Germany frequently and have met a great many of the leading men in the iron and steel trade in Germany and the people who are connected with the publication of the news.

Q. State whether or not you know the reputation in Germany of that journal.

A. I know the reputation of this paper in Germany.

Q. State whether or not it is there accepted as authoritative.

A. It is accepted as an authoritative publication on the iron and steel trade and the prices of iron and steel products.

Q. What products were taken from that source—the prices, I mean.

A. Most of the prices in Germany were taken from the

publication I have just mentioned, Stahl und Eisen. The principal exception was with respect to rails. The prices for rails I obtained from a high official in the railway administration—the contract prices paid by the Prussian-Hessian Railway administration for rails for the period in question.

MR. LINDABURY: I object to that as anonymous hearsay.

By MR. DICKINSON:

Q. State who the official was.

A. Herr Geheimrat von der Leyen.

Q. State who he was.

A. He was one of the upper officials of the Prussian Railway administration.

Q. The railroads there are controlled by the government, are they?

A. Most of the railroads in Germany are controlled by the state or imperial governments.

Q. Is he a government official?

A. He is one of the highest officials in the railway administration of Prussia and of the Imperial Railways, too.

In some cases the information as to prices of the products selected was not obtainable from the journal Stahl und Eisen, and in such cases I took the prices from other authoritative sources. One other source was a trade journal entitled "Glückauf."

Q. State what that was.

A. It is an authoritative journal for the coal and iron industry and publishes regular prices current for the said industry.

Q. Do you know its reputation in Germany?

A. I know its reputation in Germany as an authoritative source for price quotations.

Two other sources of information that I used were official German imperial government publications, one entitled Vierteljahrshefte zur Statistik des Deutschen Reichs, which is an official statistical publication which regularly publishes the prices of various products, including iron and steel products, or certain of them, in the German Empire.

Q. Is it published by the Government?

A. For the Government.

Another source of information I used, where the Stahl und Eisen quotations were lacking, was the recent Imperial German Government investigation of certain combinations in the iron and steel industry and other industries. These publications were published under the title of Kontradiktorische Verhandlungen ueber Deutsche Kartelle.

MR. LINDABURY: In what year?

THE WITNESS: In the course of several years, beginning in 1903. The publication extended down to a much more recent date. I am unable to say when the last one was issued. They dealt with other combinations besides iron and steel combinations.

MR. LINDABURY: Well, approximately when?

THE WITNESS: The ones I used were published approximately between the years 1903 and 1905.

By MR. DICKINSON:

Q. Have you stated all the sources of your information?

A. There is one further source to be mentioned, namely, in respect to billets: In respect to billets I also used quotations that were furnished to me by the general manager of the Stahlwerks-verband, or steel works union, or steel syndicate, as it may be called. The official quotations of this steel works union were furnished to me by him for a period of a number of years.

Q. When were they furnished to you?

A. They were furnished to me in the spring of 1908.

Q. In the course of this investigation?

A. In the course of the investigation by the Bureau of Corporations into the iron and steel industry.

Q. For what purpose were they procured by you?

A. They were procured by me for the purpose of making a report on the prices of iron and steel products and related matters by the Bureau of Corporations.

Q. Now, Doctor, having stated the sources of your information, please explain the manner in which you compiled these tables.

A. For England the prices of all products were taken,

as stated, from the Iron and Coal Trades Review, and with the one exception they were all quoted weekly, the exception being foundry iron. The weekly quotations were averaged in order to obtain monthly average prices, and the monthly average prices were averaged to get the yearly average prices. The one exception referred to was for foundry pig iron, for which product the Iron and Coal Trades Review had already compiled the average monthly prices in the form desired, and those were used instead. The prices so quoted and used were practically complete. There was only one gap in the quotations where it was necessary for me to make an interpolation, and that was for steel sheets, where five months were missing in the quotations. I interpolated the price of sheets in accordance with the movement of the price of tin plate bar as being the most scientific method of establishing the missing quotations. That is to say, I had the price of tin plate bar for a period that overlapped the quotation for sheets, and where the price of tin plate bar remained constant I put in the corresponding quotation for the missing prices of sheets.

Q. How long a period do you say that covered?

A. Five months.

Q. How about the price of rails? You have explained the English prices?

A. I have explained the English prices.

Q. How about the German prices?

A. In respect to German prices, the quotations from the Stahl und Eisen were given in the form of monthly quotations and were simply used in the form given in these tables. The prices of rails were furnished to me, as stated, in the form of the contract prices over specified periods, and the price for each month was assumed to be the price for the current contracts. In the case of plates, the prices were quoted quarterly, but the prices were applicable to each month of that quarter, and were used in that way. As a matter of fact, the prices in Germany are frequently quoted for quarters or half years, or sometimes for whole years, and give the established price for that period.

Q. You spoke of interpolating prices. Is it shown on the tables where they were interpolated?

A. In respect to the English prices, as I have already described, the interpolation is shown in red ink, and noted as such. In the case of the German prices, interpolations were also made, likewise marked in red ink and noted as such. The interpolations were more numerous in the case of the German prices. Where the prices were stable, that is to say, did not fluctuate from month to month, if a month was missing in a quarter, the quarterly price was interpolated as the prevailing market price for that quarter. If, however, the price movement was irregular, and that occurred only in two cases that could be determined, the market condition was noted, and if the break came before or after, the price was interpolated accordingly as equal to the previous price, or the succeeding price—vice versa, I should say.

MR. LINDABURY: What is that?

THE WITNESS: If the break in the market was found to have occurred subsequently to the date of the missing month, the price of the preceding month was used; but if it occurred before the month in which the price was missing, the price of the succeeding month was used. In one case the price for the whole year was missing. There were no quotations for the year, on account of the demoralized condition of the market; and I interpolated the mean price of the preceding and succeeding years.

By MR. DICKINSON:

Q. That is shown on the table, is it?

A. Yes.

MR. LINDABURY: With proper fluctuations, I suppose, to show competitive conditions?

THE WITNESS: We did not know what the prices were in that intervening period, and did the best we could, and put in the mean.

MR. LINDABURY: What year was that?

Judge, I call this cross examination on the offer of the tables. I have only a question or two.

MR. DICKINSON: I do not object.

THE WITNESS: That was for steel plates, the year 1901, when there was a very bad break in the German iron and steel market.

By MR. LINDABURY:

Q. Were there no quotations for that time?

A. The trade journals in several instances made no notations whatever of the price.

Q. Did you find no quotations during that year in any of the authoritative trade journals?

A. For this particular product, I could find no quotation that I felt could be justly interpolated instead of the mean; that is to say, for the same product.

MR. SEVERANCE: That is not a direct answer. He does not say that he could not find any.

MR. DICKINSON: I think that is more properly matter for cross examination.

MR. LINDABURY: It is a proper cross examination now on this offer, with respect to that interpolation, Judge.

THE WITNESS: I did not find any.

MR. DICKINSON: It might just as well be now as at any other time.

MR. LINDABURY: It will only take a moment. I do not mean to enter upon a general cross examination.

MR. DICKINSON: Very well.

By MR. LINDABURY:

Q. Do I understand that you found no quotations, or none that you felt to be reliable?

A. None for the same product.

Q. I mean, of that product.

A. Yes; none of the same product.

By MR. DICKINSON:

Q. You mean no quotations at all?

A. No; none at all, for the same product.

By MR. LINDABURY:

Q. And what did you interpolate, then?

A. I interpolated the mean of the preceding and succeeding years.

Q. Do your tables, under headings or otherwise, show the particular source of information for the different parts of them? You used several sources of information, you say?

A. The tables indicate the source of each quotation indicated in the table, by general description or special notation.

Q. I mean, whether it was from the one or the other of those various sources of information which you have referred to.

A. Yes, sir.

MR. DICKINSON: We now offer these tables in evidence.

MR. LINDABURY: We object to the offer of these tables, on the ground that they are irrelevant and immaterial, and based upon hearsay.

(The tables referred to were thereupon marked Government Exhibit Walker No. 251, November 20, 1912, to Government Exhibit Walker No. 281, November 20, 1912, both inclusive.)

By MR. DICKINSON:

Q. State whether or not, in the same connection, you prepared any diagrams comparing the price movements of iron and steel products in the United States and in England and in Germany.

A. Yes, sir.

Q. Have you a diagram there, produced at the request of the Government?

A. I have; Diagram 9, comparing the average prices of Bessemer pig iron, foundry pig iron, billets, rails, shapes, plates and sheets combined, for the United States, England and Germany, 1895 to 1911.

Q. In what manner was this diagram prepared, Dr. Walker?

A. This diagram was prepared in the same manner as the diagrams I have previously described.

MR. DICKINSON: I offer this diagram in evidence.

MR. LINDABURY: It is objected to upon the same ground that the tables upon which it is based were objected to.

(The diagram referred to was thereupon marked Government Exhibit Walker No. 282, November 20, 1912.)

Q. Referring to that diagram state in general the relative movements of the average prices of iron and steel products quoted therein in the United States as compared with England and Germany.

A. Taking the period prior to April 1st, 1901, the lines showing the average prices in England, Germany and the United States show that such average prices were lower in the United States than in England or Germany for a part of the period and higher for a part of the period. They were lower for several months in 1897 and throughout 1898. Also for about the last half of 1900. The prices were higher during the rest of the period in the United States. It may be noted that the prices in England were almost uniformly lower than in Germany. For the period subsequent to March 31, 1901, the prices in the United States were uniformly considerably higher than the prices in either Germany or England, except in 1911, and in the latter part of that year the prices in the United States fell even below the prices in either England or Germany.

Q. That period of low prices in the United States in 1911 began at what time?

A. A distinct break occurred in May, 1911, and the prices declined to a considerably lower point by November of the same year.

Q. What sort of a market was that in the United States?

A. In May, 1911, the iron and steel makers agreed to—

Q. (Interposing) You need not state what they agreed to, but what kind of a market was it?

A. It was a competitive market.

Q. How was that market characterized in ordinary phraseology; is there any such term known as an open market?

A. In the iron and steel trade there is such a term as open market used, yes.

Q. Is not that the sense in which you use competitive market—an open market?

A. Yes, sir.

Q. Then state whether or not that was a generally known fact in the United States.

A. That was a generally known fact, a matter of common report, a matter of common knowledge.

Q. Referring to tables 63, 64 and 65 (Government Exhibits No. 279, No. 280, and No. 281), showing the combined average prices of several similar iron and steel products in the United States, England and Germany, respectively, what were the respective average prices for the two periods, to wit, January 1st, 1895, to March 31, 1901, and April 1, 1901, to December 31, 1911, in each of said countries; what was the increase or decrease shown in each case, and the percentage of increase or decrease, respectively?

A. For the United States the average price for the first of the said periods of the said products was $27.10 per ton. For the second of the said periods it was $30.35. That would be an average increase of $3.25 per ton, or a percentage increase of 12 per cent.

For Germany the average price of said products for the first of the said periods was $26.15, and for the second of the said periods was $24.67 per ton; showing a decrease of $1.48 per ton, or a percentage decrease of 5.7 per cent.

For England the average price of the said products for the first of the said periods was $24.21 per ton, and for the second of the said periods was $25.39 per ton; showing an increase of $1.18 per ton, or a percentage increase of 4.9 per cent.

Q. Explain any difference in terminology in those countries—England, Germany and the United States—in respect to those commodities to which you have referred.

A. I have described these commodities as seven similar commodities. The only important differences to be noted are these: That in England and in the United States the Bessemer is acid-Bessemer; in Germany it is basic Bessemer pig iron. In respect to shapes, in England it is ship angles, and in Germany and the United States, beams. The plates in England are ship plates, and in the United States tank

plates. The other commodities would be covered by substantially the same terms, in the several languages.

Q. You have already stated that you have prepared these various price tables and diagrams produced by you in the regular course of the investigation by the Bureau of Corporations of the steel industry. Now explain more fully the connection in which they were prepared.

A. They were prepared in the regular investigation of the Bureau of Corporations into the steel industry, with the plan of embodying the results, these tables, diagrams and so forth, in a report on that subject as a part of the report of the Commissioner of Corporations on that industry.

Q. State what reports the plan contemplates, what have been made and what are in process of preparation.

A. The plan contemplated the issuance of three reports; one on the organization and capitalization of the Steel Corporation, and its profits, etc.; one on prices of iron and steel products, and conditions affecting their movement; and a third part on costs of production. The first part has been published, and of the third part the preliminary report has already been issued, and a more complete report, as to cost of production, is in process of completion. The second part, namely prices, has not yet been completed or issued.

MR. COLTON: How is the published report of the cost of production described?

THE WITNESS: The published report of the cost of production as it was issued before the report on prices was completed was entitled "Part II."

MR. DICKINSON: That is all, Dr. Walker.

CROSS EXAMINATION,

By MR. LINDABURY:

Q. You began your review of the steel industry with the year 1895?

A. Yes, sir.

Q. What were you doing in that year?

A. In 1895 I was completing my preparation for the degree of Doctor of Philosophy in the first half of the year, and

in the second half of the year I was teaching economics in Colorado.

Q. Where were you completing your studies during the first half of the year?

A. In New York; partly in Boston.

Q. How old were you then?

A. I was 24.

Q. And what connection with the steel business did you have at that time?

A. I had no connection with the steel business at that time.

Q. Had you ever had anything to do with at all up to that time?

A. I had had nothing to do with it.

Q. You had neither bought nor sold steel products?

A. No, sir.

Q. You had not manufactured steel products?

A. No, sir.

Q. Had you ever been in an iron ore mine?

A. No, sir.

Q. Had you ever been in any steel works?

A. No, sir.

Q. The period 1895 to 1898 is a period which you have reviewed in some respects by itself, and in respect to which you have given some testimony. Now, what were you doing during the rest of that period?

A. During the rest of that period I was teaching economics in Colorado.

Q. During the whole of it?

A. During the whole of the rest of it.

Q. I think the Colorado Fuel & Iron Company was located out there somewhere?

A. At Pueblo.

Q. Did you visit that company?

A. No, sir.

Q. Did you go into any of its works?

A. No, sir.

Q. Did you go into the works of any other steel manufacturing company?

A. Not at that time, sir.

Q. Did you have anything at all to do with the iron and steel industries during that period?

A. No, sir.

Q. Except, I suppose, you read the newspapers?

A. Yes, and I talked with people who were interested, to some extent, in those works there; but nothing to speak of.

Q. Talked with whom?

A. I forget who they were, but some men in the town where I lived, some men connected with the works.

Q. You do not remember their names?

A. No, sir.

Q. Or the length of those interviews?

A. No, sir.

Q. You did get a great deal of your information at that time in that way, I take it.

A. None.

Q. From the end of 1898 to March 31, 1901, what were you doing?

A. I was teaching in Colorado and in Cleveland, Ohio.

Q. Were you engaged in the iron business during that time?

A. No, sir.

Q. Did you visit any iron works?

A. No, sir.

Q. You did not visit any iron works during that period?

A. No, sir.

Q. Or talk with anybody else about the steel business?

A. I talked with people, yes.

Q. In the street cars or in their offices or at the mines or works?

A. I talked with engineers a little, and I remember visiting M. A. Hanna's office, and talking with one of the principal men, Mr. Richards, there.

Q. You got a good deal of information there, did you not?

A. No, not much. I called by invitation.

Q. How long were you there?

A. A very short time.

Q. Who invited you to go there?

A. The gentleman I called on.

Q. What was his name?

A. Mr. Richards.

Q. How long were you there?

A. I may have been there half an hour.

Q. You do not know?

A. I do not charge my mind with the time of my calls.

Q. Did your interview relate to the iron and steel industry in any way?

A. Only that he took occasion to describe the business of handling ore, and so forth, the business in which he was engaged.

Q. Did he consult you professionally on the subject?

A. No, sir.

Q. Had you had previous acquaintance with him?

A. A slight acquaintance previously.

Q. You had a slight acquaintance with him?

A. Very slight.

Q. Were you interested in ores at that time?

A. Not financially, no.

Q. You did not own any ore properties?

A. No, sir.

Q. You were not engaged in mining ore?

A. No, sir.

Q. Or in transporting ore?

A. No, sir.

Q. Or in converting ore?

A. No, sir.

Q. Or in selling ore?

A. No, sir.

Q. The invitation came as something of a surprise to you, then, did it not?

A. No, sir.

Q. Did you learn anything in that interview with respect to the matters you have been testifying to here?

A. Not very much.

Q. Anything that you can tell us about?

A. Nothing worth while.

Q. Did you learn of any combinations in that interview?

A. We did not discuss it so far as I recollect.

Q. Did you learn of any competitive conditions in trade at that interview?

A. Not so far as I recollect now.

Q. Did you learn anything in that interview, anything about price movements?

A. Not that I recollect.

Q. What were you doing from 1901 to 1905?

A. A part of the years 1901 and 1902 I was teaching at Cleveland, teaching economics. Then during a part of the years 1902 and 1903 I was in Germany studying the industrial combinations in that country, particularly the combinations in the coal industry and the iron industry; and subsequent to that time my time was practically all devoted to work in the Bureau of Corporations.

Q. Were you during that time interested in the iron business in any way?

A. Not financially.

Q. Or engaged in it in any way?

A. Not in the way of buying or selling or dealing—I was studying it to some extent.

Q. Have you ever, Dr. Walker, been interested in the iron business, as an owner, producer, shipper or employee, or in any other way?

A. None of those you specifically mention. I have in this way, that I have spent a number of years studying this subject.

Q. In books?

A. Partly in my private capacity as a student of economics; partly in official Government investigations.

Q. The official Government investigation that you refer to is the one undertaken by the Bureau of Corporations in Washington?

A. Yes.

Q. I am wanting to know whether or not you obtained any knowledge or experience by actually working with the men who were producing ore, iron or steel, or selling the same.

A. It depends on what you mean by "working with". I have been working for the Government and with those men when they were working in their business.

Q. Did you have any practical connection with the iron or steel industry?

A. In so far as the Government investigation of the iron and steel industry is a practical connection, I did have.

Q. Did that investigation take you into the mines and the works?

A. Yes, sir.

Q. Tell me when?

A. That is to say, into the works in this country and into mines in other countries.

Q. Have you ever been in any iron ore mines in this country?

A. No, sir.

Q. Have you ever been into the Lake Superior region?

A. No, sir.

Q. Do you know anything from actual experience or observation about the actual conditions up there?

A. Not from direct personal observation, no, sir.

Q. Have you ever been in the steel works in Chicago?

A. No, sir.

Q. Or in Gary?

A. No, sir.

Q. Or in Pittsburg?

A. Yes, sir.

Q. Which ones?

A. In the Pittsburg district I have been in the Homestead Works, in the Edgar Thomson Works, in the National Tube Works, in the Monessen—

Q. Where are the National Tube Works located?

A. At McKeesport, I think. The Vandergrift Sheet Mills, and I think the works entitled "The Continental", at Pittsburg. I am not sure of that name.

Q. When were you there?

A. In 1907.

Q. Once or more than once? Did you make more than one visit there?

A. I do not think I made more than one visit to each works; that is, more than one day in each works.

Q. How long did you spend at each of the works?

A. I generally spent a whole day in each works.

Q. Do you mean you spent half a dozen days in visiting these works that you have mentioned?

A. I should think more than half a dozen days.

Q. And you witnessed the operations?

A. Yes, sir; and talked with the engineers, and superintendents.

Q. Could you tell by the operation of the plants, as you witnessed them, whether they were under competitive or non-competitive conditions?

A. Not by watching the machinery.

Q. Or the operations of the men?

A. Not by watching the laborers work; but perhaps, I do not know but what I may have gotten information from the people who were managing the works.

Q. Did you?

A. I don't remember.

Q. I do not want to know what you might have done, but what you did. You do not recall any information gotten in that way on the subject of competitive or non-competitive conditions, do you?

A. I could not refer to any specific fact.

Q. Did you get any information from the men or from watching the works, or in connection with those visits, on the subject of price movements?

A. No, sir.

Q. Did you mean to leave us to infer that you might have, or that you did get information on these subjects from your visits to the works, or talks with the men?

A. I had principally in mind the fact that I had talks with men like Mr. Schiller, Mr. Dinkey, and Mr. Palmer, and a tin plate man whose name I have forgotten. Anyway, several of the leading men in the industry there.

Q. Very well. Tell us what they told you that bore on this subject of competitive or non-competitive conditions.

A. I have said that I do not remember in detail any specific facts. They may have mentioned about the movement of prices, but the cost of production and prices were talked of in some cases.

Q. You do not remember anything that any of them told you?

A. Not today; no, sir.

Q. I understand that when you undertook the work you have testified about for the Bureau of Corporations, you obtained from the steel manufacturers the prices of their products?

A. In connection with those visits?

Q. No. I will repeat my question.

(The stenographer repeated the question as above recorded.)

A. Considerable information about the prices of products was furnished by companies to the Bureau of Corporations, which came into my hands in connection with the investigation of the business.

Q. They were furnished at the request of the bureau, were they not?

A. Yes, sir.

Q. The Steel Corporation furnished their prices, did they not?

A. They furnished a considerable amount of material on prices.

Q. Covering how many years?

A. Practically all for the years 1902 to 1906, inclusive.

Q. When was the information asked of them?

A. I cannot say exactly, but chiefly in 1905, and a few years following.

Q. And did these prices cover a large variety of their products?

A. A considerable variety of their products.

Q. Substantially all of them?

A. I should not say all, but a fair assortment of leading products.

Q. Such as were asked for, I suppose?

A. Yes, sir.

Q. That is, the assortment being made by the Bureau?

A. Perhaps taking advice with the parties who had immediate charge of furnishing the information.

Q. Perhaps so. But I mean it was the Government who either selected or accepted the assortment?

A. Yes, sir.

Q. They obtained those prices also from other manufacturers, did they not?

A. To some extent; yes, sir.

Q. So far as they chose to ask it, did they not?

A. I do not know that they always got all they asked for, but they got considerable information from other companies. Of course, sometimes things were asked for that were difficult to furnish, and companies would be excused if they said it was too laborious for them to furnish those prices in the form requested.

Q. I am asking about the prices they obtained for their products. It was not laborious to furnish them, was it?

A. It is sometimes a very laborious matter to pick out prices on certain products in the form desired.

Q. Perhaps as to some, but not all.

A. For many products it is a very difficult thing to pick out prices, especially for different sizes, for different specifications.

Q. But it was not difficult to obtain prices for representative products, was it?

A. Yes, for representative products in some cases.

Q. What?

A. Well, for the finished products it is much more difficult to furnish prices than it would be for pig iron.

Q. How about beams and billets?

A. Beams would be a good case to take. On account of different sizes and specifications it would not be so simple to furnish average prices from month to month that would be comparable one with the other, as you seem to suppose.

Q. Was it difficult to obtain the base price from them, or did you ask for it?

A. I do not recollect that the base price was asked. I do not recollect now.

Q. And yet the tables you made up are all based on base prices, are they not, or all purport to give base prices, do they not?

A. Generally, where the commodity varies so that a base price is necessary in order to show the trend of the market; yes, sir.

Q. Have you not used base prices in all these tables taken from the Iron Age prices?

A. For pig iron, you would not need a base price.

Q. I am not speaking about pig iron just now, but steel production.

A. Offhand, I would not say for every one of the steel products it was a base price.

Q. You know, do you not, Doctor, that these prices which you have put in your tables from the Iron Age quotations were not the real prices which the manufacturers got? Do you not know that, Doctor?

A. It depends upon the sense in which you mean it. If you mean that the price that was quoted in the Iron Age for a given week was not the price that was being asked and paid for on contracts of sale at that time, I do not think that is so; that those were going prices.

Q. I think you can answer the question a little more closely than that, Doctor. You got the prices received by a very large number of the manufacturers, did you not, for such a variety of their products as you chose to ask for?

A. Not a very large number of manufacturers. I should say from four or five; not more.

Q. They were the largest manufacturers, were they not?

A. We had——

Q. Answer the question, please, Doctor. Did you not get the prices from four or five of the largest manufacturers?

A. From the Steel Corporation and from several other very large manufacturers.

Q. Tell us the others.

A. I think that the Pennsylvania was one, and the Lackawanna was another one, and the Republic Iron and Steel another.

Q. Were those all?

A. Those are all that I have definitely in mind that we did get prices from.

Q. Did you not get prices from Jones & Laughlin?

A. I do not remember that we did get them.

Q. Or the Cambria?

A. I am not certain about the Cambria.

Q. Did you not ask for them?

A. I am not certain about that.

Q. You wanted to find out what the real condition was in the steel trade?

A. Yes.

Q. The Cambria and Jones & Laughlin were among the largest manufacturers, were they not?

A. They were both large manufacturers.

Q. Why did you not get their prices?

A. I did not have the selection of the list at that time, and so I do not know why we did not.

Q. You do not know why? Who did have the selection?

A. I think that Mr. Baldwin made the selection.

Q. Where is he now?

A. I do not know.

Q. In this country?

A. I do not know.

Q. Who was he?

A. He was a Special Examiner of the Bureau of Corporations at that time.

Q. Did you compare these Iron Age quotations with the prices that you got from these manufacturers?

A. To a certain extent; yes, sir.

Q. Did you compare them to an extent sufficient to find that the prices gotten by the manufacturers were not the Iron Age quotations?

A. We did not believe they would be exactly the same, because they included different grades of goods, and not a uniform base quality, so that the prices would not be the same.

Q. But you took only base prices from the Iron Age and put them into your table. Why did you not take the base prices only, obtained by these manufacturers? That was not difficult, was it?

A. I think it would have been difficult to get the information exactly in that form.

Q. Doctor, what is a base price?

A. It is the price for the base grade on which the quotation is ordinarily made; and then there are, for the different sizes or specifications that depart from that base specification, extras——

Q. I did not ask about that. You answered my question when you stated what a base price is.

What is the base of billets, for instance?

A. I could not tell you from memory what the base specifications are for billets.

Q. It is the 4 x 4 size, is it not, and four feet long?

A. I do not remember.

Q. Do you not know that is the base billet?

A. I would not be certain whether that is.

Q. Did you never, in your studies of this subject, find out what a base billet is?

A. Oh, yes; but I do not recollect the details of the specifications.

Q. We will assume, now, that it is four inches x four inches x four feet long. Do you not know there are a great many more of that size sold than all the other sizes of billets?

A. I presume a large proportion is of that size.

Q. That is the ordinary size. That is the size that is quoted in the Iron Age, is it not?

A. It is the base size that is quoted.

Q. Exactly; it is the base size. Why did you not find out the base price actually gotten, then, by these manufacturers, for billets, and compare that with the Iron Age quotation, to see whether or not these men got those prices, and whether they were unvarying during the times you say that the prices were constant? Why did you not do that?

A. The prices are made under so many different conditions of terms of delivery, the time of delivery, and the other terms, that it might not be easy to get from the companies the prices in that form; and we did not consider that that was necessarily the vital thing in determining what the course of the market was. The question was, what was the quotation of the market; what did they give as their price from time to time; did they continually quote the same price to buyers, or was the price changed every day, that they quoted.

That showed what the tendency of the market was. If they were inclined to make rebates or modifications of those prices for different buyers, or under different circumstances, that is another thing. There are a good many complications there—export trade, domestic trade, delivery in this market or that market, etc.

Q. Have you finished, now, Doctor?

A. Practically.

Q. I want you to answer the question fully, but I do not want arguments.

A. I was trying to explain why we did not do it.

Q. Very well. If they made different prices to different customers, that would indicate that they were not selling at a uniform price, would it not; and that was the very question you were seeking to find out about, was it not?

A. I did not say that they always made a different price to different customers. When the market was very firmly established, the prices were generally very firmly maintained, as is shown by the actual prices received for rails. They scarcely varied at all from the official quotations.

Q. Did you find out the prices they actually got for rails?

A. We had statements——

Q. Answer that question yes or no. Did you find out from the investigation you made, the prices they actually received for rails?

A. Yes, sir.

Q. Did you find that out as to any other product?

A. Yes, sir.

Q. Exactly. We will leave steel rails out of view for the present, because I was talking about products generally, and in particular, about other products that you mentioned—beams, billets and suchlike. But sticking to billets for the time being, did you find any case where, for any given length of time, the price received by these manufacturers for billets agreed with the price quoted in the Iron Age?

A. I do not recollect now. It is a long time since I have compared those prices.

Q. Very well. Where the time of delivery and other conditions were the same to all, did you find any case where the

price received for billets by any two manufacturers was the same,—the base price, unaffected by conditions of delivery or time?

A. I would not recollect now.

Q. You would not be willing to say, then, would you, Doctor, that during these various periods when you show by your charts and tables constancy of price, as indicated by quotations from the Iron Age, that there was in fact constancy of prices received by manufacturers? You would not say that, would you?

A. I should not expect to find absolute constancy.

Q. Will you answer my question yes or no, please?

MR. DICKINSON: He is not bound to answer yes or no.

MR. SEVERANCE: He is, on cross examination.

MR. LINDABURY: Yes; he must. Where a question is susceptible of a yes or no answer, he must answer it categorically, and he may explain, afterwards, as much as he chooses. I must have a categorical answer to questions which admit of it.

By MR. LINDABURY:

Q. Answer yes or no, and explain afterwards, Doctor.

A. I wish to answer properly.

Q. I did not mean that you seek to evade a proper answer, but I am only insisting upon my rights as a cross examiner.

(By request, the stenographer repeated the question under discussion, as follows):

"Q. You would not be willing to say, then, would you, Doctor, that during these various periods when you show by your charts and tables constancy of price, as indicated by quotations from the Iron Age, that there was in fact constancy of prices received by manufacturers? You would not say that, would you?"

THE WITNESS: No. I would not expect that they would show absolutely the same price.

By MR. LINDABURY:

Q. That is not quite the question.

(By request, the stenographer again repeated the pending question).

THE WITNESS: No; not an absolute constancy.

By MR. LINDABURY:

Q. You spoke, Doctor, in connection with the charts, of a variation shown in the quotations of some products for the years 1897 and 1898; quite a slight one, but sufficient, you said, to indicate a competitive condition. You remember that, do you not? I do not know whether we have the chart here.

A. Yes, I think I do.

Q. Very well. Did you not discover a greater variation during practically the whole period of time covered by your testimony than that in the prices received for products generally, excluding rails, by these different manufacturers, as these prices were severally reported to you by them?

A. If I understand the question aright, there was; and, so far as I recollect the prices that we received from the companies of their own transactions, there was a greater variation at times between the prices received for particular products than between the prices of certain products which I described as competitive in 1897 and 1898.

Q. I think I perhaps did not express myself clearly. Do not these reports show the variation just referred to at times when your charts, made up from the Iron Age quotations, show constancy of price? That is what I really meant.

A. I do not recollect. I could not say, now, without an examination of the tables, but I would expect to find some variation in those prices where the quoted price shows a constant price.

Q. And this variation was not merely between the price received by the manufacturers generally—what I will call the average price received by them—and the quoted price, but also existed as between the prices the different ones received? That is, there was that variation in the prices received by the different manufacturers for the same article, sold under similar conditions, was there not?

A. For the prices that we had, there were variations between the prices at different times, and between different makers, but we could not always tell whether the goods specified were exactly the same at one time as compared with another, or between one company as compared with another.

The specifications of the products for which our prices were reported were not in the form that enabled us to make certain that it was in each case the same.

Q. When you found this variation between the average of prices returned to you by the manufacturers, and the quoted prices, and also between the prices of the manufacturers themselves, why did you not ask for the prices of these others which you had not gotten yet, to see how they corresponded?

A. At that time I was not in charge of the work. It was in charge of Mr. Baldwin. Mr. Baldwin was formerly an iron and steel manufacturer. He was secretary—

Q. You have answered my question when you said that you were not in charge.

A. I wish to explain it.

Q. Very well.

A. He was in the iron and steel business as a leading officer of the Ohio Steel Company, and later of the National Steel Company, and later was connected in that same direction with the Steel Corporation, and it was his judgment, as an iron and steel manufacturer, that to compare the prices from time to time with reference to the market movement, it was best to take the quotations of an authoritative trade journal like the Iron Age than to try to use the prices that were reported to us by the companies. I was assisting him at that time, and subsequently thereto, and it was under his direction that I used the market prices rather than attempting to dig out exactly comparable commodities from the books of the companies, which would have been an enormous piece of work. It was for that reason that it was done in that way, because it was thought by him, as a man well acquainted with all the details of the business that that was the better way to do it. I was at that time acting in a subordinate capacity and I did it under his direction.

Q. I suppose you have lived long enough in this world, Doctor, and have had sufficient experience to know that list prices and actual prices of manufacturers do not ordinarily correspond very closely?

A. They often vary, depending chiefly on the degree of control, or the degree of competition in the market. If the competition is very keen, the list price may be cut all to pieces;

but if there is no competition, the list price may be held almost absolutely.

Q. That is not quite what my question calls for. In all branches of trade you know, do you not, that list prices, published prices, are apt to remain the same for years, although the selling price varies all the time?

A. That is particularly the case——

Q. No, no. First, is not that the fact?

A. For certain products it would be, particularly for such products as small shelf hardware, where a list price is published and the terms of sale are generally made by discounts. Those discounts, wherever prices are quoted as indicating what the market is, are also quoted. That is found, sometimes, for example, in the wire business, as well as in the shelf goods in the hardware trade. That kind of list prices, however, is not characteristic of the heavy iron and steel trade.

Q. Doctor, if you wanted to find out, as a purchaser, let us say, anxious to get any product of steel or anything else as cheaply as you could, if you wanted to find out the bottom prices, you would not trust to trade quotations, would you?

A. It would depend on my knowledge of the market and the conditions of the market. In the steel rail market I think I would be pretty safe in assuming that I could not get less than the official quotations; and the same for tin plate; but if it was a question of pig iron, I should want to go shopping.

(Whereupon, a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The session was resumed pursuant to the taking of recess.

DR. FRANCIS WALKER,

the witness under examination at the taking of recess, resumed the stand for further

CROSS EXAMINATION

By Mr. Lindabury:

Q. What elements enter into the making of prices in normal times under competitive conditions in the steel industry?

A. Generally speaking, broadly speaking, I would say the conditions of supply and demand, especially demand.

Q. In fact in every line of production those are controlling circumstances, are they not?

A. If the market is competitive.

Q. I was speaking of a competitive market?

A. Yes.

Q. Controlling often without regard to the cost of production?

A. Frequently the market movement may be quite independent of cost, going below it sometimes, or very much above it.

Q. So that if you were to take two products costing substantially the same to manufacture, one of which was subjected to a constant demand and a regular supply, and the other to overproduction at times, and sudden and greatly increased demands at other times, you would not expect that the selling price of those would run along parallel lines, would you?

A. No, sir.

MR. DICKINSON: This all refers to competitive conditions, I suppose?

MR. LINDABURY: All my questions just now relate to competitive situations—normal trade.

By MR. LINDABURY:

Q. Over-production in any given line tends of course to the reduction of prices, does it not?

A. It must be considered with relation to the demand, of course. I want to make it clear that a very large production does not necessarily mean over-production.

Q. No, but I used the term over-production as distinguished from large production. Over-production with relation to demand.

A. Yes.

Q. Over-production with relation to demand tends to lower prices?

A. Yes, sir.

Q. And sometimes if the over-production is very great to lower them below cost?

A. It is quite possible at times.

Q. And in the history of the steel business it has done it at times, has it not?

A. I think so. Certainly for certain times prices have been below the——

Q. (Interposing) Again, in many lines, there has been a demand in excess of the supply at times?

A. Oh, yes.

Q. And such demand tends to greatly increase prices, does it not?

A. Oh, yes.

Q. So that if a line of production subject to such influences would under other circumstances parallel another line, it would not, when so subjected, do it, if the other were not subjected to the same, would it?

A. To the same conditions of supply and demand?

Q. Yes.

A. No. I would not expect it.

Q. You testified with regard to the production of the years 1897 and 1898, and stated that although the prices were low, the well organized or best organized companies—I have forgotten which—made some money. You remember that, do you not?

A. I said something to that effect, yes, sir.

Q. What companies made any money during those years?

A. Well, Carnegie made a lot of money.

Q. How much did they make?

A. They made about seven million dollars in 1897, and about 11 and a half million dollars in 1898.

Q. What other companies made any money?

A. The Federal, on a listing statement they got out in about 1898, said they estimated their earnings for the year at $4,000,000. That was for 1898.

Q. When was the Federal formed?

A. The latter part of 1898. For that year.

Q. I am speaking of the time prior to the formation of the Federal.

A. They meant for the properties that were coming in, their earnings were estimated at about $4,000,000 for that year.

Q. Do you think the Illinois made anything for 1897?

A. They made several hundred thousand dollars, the Illinois alone.

Q. Are you quite sure of that?

A. Yes, I am quite sure of it. That deducts interest on the bonded debt, too, I think.

Q. Didn't they lose a lot of money?

A. The Federal?

Q. The Illinois.

A. No. That is not my information.

Q. Where did you get the information? Where have you ever seen any information that showed the results of their manufacture in 1897?

A. I refreshed my recollection by consulting the Bureau of Corporations' report on the iron and steel industry, and it showed some figures about the Illinois Steel Company, and that is where I immediately remember them from. I have seen other papers before; I do not remember now what the source of that information was.

Q. Did they show it for 1897?

A. That is my recollection.

Q. You might be mistaken about that, might you not?

A. No, I do not think I am.

Q. Do you say that the report of the Bureau shows the earnings of the Illinois for 1897?

A. In 1897 they were about $300,000 earnings, as near as I can recollect, after paying the bonded debt.

MR. DICKINSON: The bonded debt, or the interest?

THE WITNESS: The interest, I mean to say.

By MR. LINDABURY:

Q. And you think that for the year 1898 they showed even greater earnings?

A. I do not recollect anything for the Illinois, but for the Federal, the combination of the companies, including the Illinois, it was estimated to be about $4,000,000 for that year.

Q. Did the report show the result of the Illinois profits in 1898?

A. I have no recollection of them, separately.

Q. The report that you last have alluded to shows the

result of the operations of the railroads and the mines, and everything else owned or acquired by the Federal does it not?

A. All the companies in the Federal, estimated to exceed $4,000,000, I think.

Q. The conditions in the trade were very bad in 1896 and 1897, were they not?

A. In 1896 they were very bad, and in the first half of 1897 they were quite poor; but the last half of 1897 was a very good year, and it was the best half year, I think, that the business had had for a good many years.

Q. The best half in what respect?

A. Well, in volume of tonnage, certainly in volume of tonnage, and very good in profits.

Q. The prices were all cut to pieces during that period, were they not?

A. They were low, but the costs were low.

Q. Yes. What was labor worth?

A. Well, labor was pretty low.

Q. Men were getting a dollar a day, were they not?

A. Some were getting that and some were getting more.

Q. Was ordinary labor getting more than a dollar a day?

A. I should hesitate to say what ordinary labor around a blast furnace was getting at that time, but I should think it would be over a dollar.

Q. We have had a good deal of testimony on that subject. I suppose you have not read it, have you?

A. No.

Q. Do you think it would be fair to call the condition in the latter part of 1897 and 1898 as favorable, as prosperous?

A. The last part of 1897 I think was considered, from the standpoint of the people at that time, prosperous; and 1898 was the most prosperous year the iron trade ever had up to that time. They have had more prosperous years since then, but up to that time that was the most prosperous year they had.

Q. Do you know how many bankruptcies there were in the steel business that year?

A. No, sir.

Q. Did not about one-half of the concerns in business during that year fail?

A. I do not think so.

Q. Do you not know that a very, very great number of them did fail?

A. No, sir, I do not know that they did, in 1898.

Q. Do you know that they did in 1897?

A. No, sir.

Q. Or 1896?

A. No; I do not know. I think it is quite likely. The year was bad enough to produce bankruptcies.

Q. Have you ever been interested to ascertain how many were in business in 1896, and how many at the end of 1898?

A. There were some important consolidations effected during that time.

Q. Well, exclude the consolidations?

A. No, I have not counted them. I have a general familiarity with the concerns in the business, as shown in the Iron & Steel Directory for 1898.

Q. But you have never taken any count of the failures during that period?

A. No, I have never made any careful count of them. I do not know that they were numerous.

Q. Have you made any attempt to find out what percentage of these concerns that were in business during that time were manufacturing at an actual loss, that is, selling below cost?

A. It would have been impossible even if I had tried to find out, because it was hard enough to get the cost back to 1902, and it would be absolutely impossible to get it back to 1898, and Mr. Filbert will tell you that they would not have been much good if we had gotten those figures.

Q. I do not think you or Judge Dickinson would want me to tell you what Mr. Filbert says just now on that subject. You have taken for certain comparisons the results of manufacturing for the years 1895, 1896, 1897 and 1898. I was intending to ask you whether or not all except the first of those years were bad years in the business, with prices abnormally low, and disaster attending generally the manufacture of steel products.

A. Do you ask me that question?

Q. I ask you now, again, if that is not so?

A. 1895, I think, was a prosperous year, much more prosperous than the trade had been——

Q. (Interposing) I have assumed that in my question.

A. 1896, I think, was a very bad year. The first part of 1897 was very poor. The last half of 1897 was a good period. 1898 was a very prosperous period, the most prosperous year the iron trade had had up to that time.

Q. Judge Dickinson has produced a number of witnesses in this case who have sworn that the years in question were the worst years the steel business has known. They were practical manufacturers. I am wondering whether you have information that differs from the information they gave us.

MR. DICKINSON: Objection is made to counsel stating to a witness what other witnesses have testified in the case, it being improper cross examination; and further objection is taken on the ground that counsel for the Government do not think the statement as made is a correct one.

MR. LINDABURY: My recollection may be erroneous, but I do not think that it is.

By MR. LINDABURY:

Q. You have called 1898 a good year. Would you say it was a good year except from the standpoint of production, that is, was it a good year as to prices or profits?

A. It was a good year as to profits, as well as very large production.

Q. I understood you to say yesterday that only those concerns which, as you termed it, were well organized, made profits.

A. No, sir; I did not say only those made profits. I said that those that were well organized generally made profits.

Q. By "well organized," you meant the very largest of them, did you not?

A. I did not mean to say that those which were not well organized did not make profits.

Q. Can you tell me any except the largest half dozen that did not in fact lose money?

A. I do not happen to have in my memory other concerns

than the Federal, the Carnegie, the Cambria, and the T. C. & I. All of them made a lot of money in 1898.

Q. The Tennessee Coal & Iron Company made money in 1898?

A. Yes. They made over $800,000.

Q. And the Cambria?

A. Over $600,000.

Q. Where did you get those figures?

A. I have forgotten where I got them, but that is my information.

Q. Are you sure you had distinct information of that kind?

A. Well, I looked it up some time ago, and the figure that is in my mind is $626,000 for the Cambria.

Q. Taking your comparative tables, I will ask you whether the price of steel products was not higher before 1895, that is, for a portion of that decade, than it was between 1895 and January 1st, 1899?

A. That is pretty hard to say. It requires computation.

Q. Have you ever ascertained?

A. I have never computed it in that way, but I computed it in another way that will possibly answer your question. Roughly, I computed for my own information, just to see what would have happened if I had done differently from what I thought was the right thing to do; I computed it for another period, namely, for the whole decade, and I found for that decade that the price of pig iron would have been lower if I had taken the whole decade than by taking the six years which I did take.

Q. I was not speaking about pig iron, because that is a raw material in the manufacture of steel, but I was speaking of steel products.

A. Of course it is basic for all steel products. If you can get cheap pig iron under normal conditions, other products will be comparatively cheap.

Q. These concerns, to a large extent, bought their pig iron, did they not?

A. Yes.

Q. Pig iron was lower before 1895 than it was during the next four years after that, was it not? I rather think you have stated that.

MR. COLTON: That is not my recollection.

A. No, I did not say that.

By MR. LINDABURY:

Q. I think you testified to that effect.

A. No, I compared six years with ten years.

Q. I know, but you also told us something about the conditions in 1890, 1891, 1892, 1893 and 1894.

A. I said in 1893 and 1894 prices of pig iron were low.

Q. Were not the prices of pig iron lower before 1895, after January, 1890, than they were during the succeeding four years? Tell us, if you know.

A. I could not judge of that without computing it.

Q. You testified yesterday as follows:

"The average prices for the ten years mentioned, that is, the whole decade from 1890 to 1900——"

THE WITNESS (Interrupting): 1891——

Q. (Continuing) "would have been slightly, if any, higher than the average prices for the six years. As a matter of fact, the price of Bessemer pig iron would have been lower."

A. For the decade?

Q. Yes.

A. But you asked for a different period.

Q. All right. Answer the question, as I have put it, if you can; and if not, I will ask another question.

A. I cannot answer it without computing it.

Q. Were the prices of Bessemer pig iron lower between 1898 and 1900 than they were between 1895 and 1898?

A. Inclusive in each case?

Q. No, not including the 1898 price, of course.

A. For 1899 to 1900, inclusive, and for 1895 to 1898, inclusive?

Q. Yes.

A. The prices of pig iron for 1899-1900, inclusive, were undoubtedly higher than for 1895-1898, inclusive.

Q. Very well. Then, does it not result, as a matter of course, that the prices of pig iron, if your statement of yesterday was correct, were lower during the four years preceding 1895 than they were during the four years succeeding that?

A. I think that would be the result of a computation.

Q. How about the prices of steel products during the four years preceding 1895? They were higher, were they not, than during the four years succeeding, although the price of pig iron was lower?

A. If I computed, I should expect to find that they were somewhat higher.

Q. You said so yesterday, did you not?

A. Not in terms.

Q. Very well. Then the spread between the price of pig iron and the cost of manufactured steel narrowed during that decade, did it not?

A. The spread between the price of pig iron and the cost of what? Will you repeat that question?

(The question was repeated by the stenographer as above recorded).

By MR. LINDABURY:

Q. I will say the spread between the price of pig iron and the price of steel.

A. I could not say without computing it. There are too many years and changes in prices for me to carry the figures in my head.

Q. Do you not know, from the investigation that you have made, that during that decade the price of steel was tending downward and the price of pig iron tending upward?

A. The price of billets and the price of pig iron moved generally on a fairly parallel line, except, particularly in 1896, when there was evidence, as I pointed out in a previous part of my testimony, of an artificial condition—

Q. Never mind about any artificial condition. I am not asking that.

A. Apart from that, they were in rather parallel lines, both going down.

Q. You have just said, have you not, that the price of products was tending upward?

A. Down to 1898—

Q. Take the whole decade. Take first the average, if you please. Was there not a general tendency, taking the decade

as a whole, of steel prices to lower and of pig iron prices to raise; did not the lines converge toward the end of the decade?

A. I think you would find that at the end of the decade the margins were greater, if you took the average prices, probably, than any other year; but if you took the years 1897 and 1898, the margins between them would probably have been somewhat lower. I do not like to state what those things are without having a chance to see the figures themselves, but my impression, from my study of the subject, is that the margins would be greater in 1899 and 1900, on account of the very high prices, when margins naturally expand.

Q. Take your two selected periods, one before April 1st, 1901, and the other afterward. You began your first period in 1895, and you ended your second one in February, 1909. Were not, let me ask you, steel prices higher during the part of the decade preceding your selected date of 1895, and lower during the part of the second decade which you omitted and which began in February, 1909?

A. I can not follow that. The prices—

Q. I wonder if you could not say yes or no to that, and then explain as much as you want to.

A. I want to be sure I understand it. It comes down to this, does it not—

Q. You do not make sure that you understand it, by going on to answer. If you do not understand the question, I will try and make it so you do understand it.

A. May I ask if this is the question: Were the prices lower in 1891 to 1894, inclusive—

Q. No, no.

MR. SEVERANCE: He did not say anything about 1894.

THE WITNESS: He said something about the rest of the decade before 1895. That is what I am trying to get at—what he meant.

(The stenographer repeated the pending question as herein recorded).

THE WITNESS: I understand that to be, getting it down to lowest terms: Were the prices lower from 1891 to 1894 than from 1909 to 1911, inclusive?

By MR. LINDABURY:

Q. No, sir; that is not it.

A. Then it does not mean anything to me.

Q. That question is perfectly plain. Let the stenographer read it again.

A. That is exactly what it says.

Q. It says nothing of the kind. Let it be read again.

(The stenographer read the question under discussion as follows):

"Q. Take your two selected periods, one before April 1st, 1901, and the other afterward. You began your first period in 1895, and you ended your second one in February, 1909. Were not, let me ask you, steel prices higher during the part of the decade preceding your selected date of 1895, and lower during the part of the second decade which you omitted and which began in February, 1909?"

MR. DICKINSON: Higher and lower than what?

MR. LINDABURY: I will put it in. I see what you mean. I will modify the question to read this way:

By MR. LINDABURY:

Q. Take your two selected periods, one before April 1st, 1901 and the other afterward. You began your first period in 1895, and you ended your second one in February, 1909. Were not steel prices higher during the part of the decade preceding your selected date of 1895 than they were during the rest of the decade, and lower during the part of the second decade which you omitted and which began in February, 1909, than they were during the rest of that decade?

A. To make sure that I can answer your question yes or no, let me see if I understand what you mean. Were they lower in 1891 to 1894 than they were—

Q. Were they higher?

A. Higher?

Q. Than during the rest of that decade, and lower between February, 1909 and the end of that decade, than they were during the part of the decade which you selected?

MR. COLTON: There are two questions there.

MR. LINDABURY: Certainly.

MR. SEVERANCE: It is not at all confusing. It is perfectly plain.

MR. COLTON: He is asking two questions. It might be that they would require opposite answers.

MR. LINDABURY: If they do, he may give them; but they do not, I imagine, because I think his statement will show what I wish to bring out.

By MR. LINDABURY:

Q. Do you not understand the question, Doctor?

A. I am not absolutely certain.

MR. SEVERANCE: Why not divide the question and ask it separately, if he wants it?

By MR. LINDABURY:

Q. All right. If you do not understand the question, I will withdraw it and ask another one.

Were not the prices of steel products higher during the part of the decade from 1891 to 1901, which you omitted from your comparative table, than they were during the portion of it which you selected, which was from 1895 on?

A. I think I should have to compute it to have an exact answer, but I think they were a trifle higher.

Q. You have computed it heretofore, have you not?

A. No, sir; not in that form.

Q. Did you not tell us yesterday that you had?

A. No. I said that if I took the whole decade, then the prices would be only a trifle higher than for the six years I did take.

Q. That is the same thing. If you took the whole decade, you would have higher prices. We will find out afterward how much higher. But you would have had higher prices than you had during the portion of the decade which you took?

A. Yes, I think so.

Q. If you had taken the whole of the succeeding decade, instead of a portion of it only, you would have had lower prices, would you not?

A. Which is the succeeding one?

Q. Don't you know which decade succeeded that decade?

A. You mean 1901 to 1910, inclusive?

Q. Yes.

A. What is the question?

(By request, the stenographer repeated the question as follows:)

"Q. If you had taken the whole of the succeeding decade, instead of a portion of it only, you would have had lower prices, would you not?"

THE WITNESS: Very slightly lower; not very much. It would have taken in three months in 1901 in which the prices were going up, just before the formation of the United States Steel Corporation. It would have taken in——

By MR. LINDABURY:

Q. No, that would not have been in the second decade, then, at all.

A. Why, yes.

Q. I see what you mean.

A. It would have taken in about ten months at the end of 1909, and twelve months of 1910. The ten months of 1909 following February were months in which the average was lower than for the preceding year. In 1910, however, the prices were pretty well restored.

Q. Let us see your chart on that.

A. So that, taking the whole average for the decade, there would not have been much difference.

Q. Let us see your chart about the restoration of prices in 1910. I call your attention to diagram No. 7, Government Exhibit No. 249, and ask you to tell us whether the average price that ruled during the portion of the decade preceding February, 1909, was ever reached or restored after that date.

A. No; it does not reach quite that level.

Q. How far below the level did it go in May and June, 1909?

A. I should say fully $6 a ton.

Q. What was the average during the portion of the decade you selected?

A. During the portion of the decade I selected, the average is—I can take it from the table——

Q. You have it there near enough.

A. It was about $32.50, say.

Q. That is what I estimated. That is it approximately?

A. Yes; that is pretty close.

Q. And it got down, in May, 1909, to what?

A. In May, 1909, it dropped to a little less than $28.50.

Q. When did it begin to rise again?

A. It began to rise in June, 1909, but not noticeably. But the last half of the year it rose steadily.

Q. It rose steadily?

A. Yes, sir.

Q. Until it got to what point, as the highest?

A. About $32.75.

Q. When did it reach that?

A. About January, 1910.

Q. How long did it stay there?

A. It began to decline immediately.

Q. Where did it go down to?

A. It declined to about $29.50.

Q. When did it get there?

A. About August, 1910.

Q. How much did it get above that?

A. Subsequently it did not rise above that more than half a dollar a ton.

Q. When did it get up to that?

A. About May, 1911.

Q. Then what happened? Did it go down again?

A. Then the market went down very suddenly.

Q. How far down did it go very suddenly? It took it two months, apparently, to get down?

A. It broke, and continued to drop, apparently, during the rest of the year.

Q. But irregularly, did it not? It slid, did it not?

A. It dropped markedly, immediately, in May, and continued to slide down.

Q. To slide down to what?

A. It got down to about $25.50.

Q. When had it been as low as that before?

A. Not since 1898.

Q. How long did it continue at that low point? Do you know?

A. I have not the diagram for the remainder of the period.

Q. But you kept pretty well informed, I imagine?

A. It has gone up this year very markedly.

Q. Where is it now?

A. That average I could not give. From the low point in 1911, I should think it would be fully up to $5 more than that.

Q. It is above your average shown on this chart, now, is it not?

A. It is above now? I do not think so.

Q. I am asking you. I am not sure myself.

A. I don't know. I do not think so.

Q. It is near it, if it is not above it, is it not?

A. I could not say, because this curve is the result of complicated computations.

Q. But generally, the prices of steel products have gone up in 1912 very considerably, have they not—five or six dollars, on the average, would you say?

A. So far as I have noted, there has been a striking advance in 1912.

Q. Why did you stop in February, 1909, instead of taking the whole decade, in making this comparative table?

A. The principal reason was because that was the date when the makers decided to terminate the co-operative arrangement of maintaining prices and declare an open market, and since——

Q. One moment.

MR. DICKINSON: Let him finish his answer.

MR. LINDABURY: All right; go ahead.

THE WITNESS: Since that time there was also another break, in 1911. The system of maintaining prices, which was characteristic of the Corporation up to that date, is better shown by that line. We showed it for other periods, too.

MR. SEVERANCE: Is this responsive?

THE WITNESS: He asked why we stopped there.

By MR. LINDABURY:

Q. Did you stop there because you assumed, rightly or wrongly, no matter which—because you assumed that the conditions before that time were non-competitive, and that thereafter they were competitive?

A. Yes, sir; we assumed that from 1901, the date indicated, to 1909, the date indicated, conditions were much less competitive than since that date, on the whole; but we also showed other periods.

Q. One moment. You are not answering my question. I simply asked whether or not you stopped then because you assumed, rightly or wrongly, that the non-competitive situation ended at that date. I understood you to say yes.

A. For that time; for the period here under consideration, we assumed that that, in a marked degree, terminated the arrangement. As a matter of fact——

Q. I do not ask what the matter of fact was. You were not in any combination scheme, were you?

A. Not that I recollect.

Q. Well, you do not know, of your own knowledge, whether there was an arrangement by which non-competitive conditions were created, do you?

A. It is a matter of common report and common knowledge. Everybody knew it.

Q. It is not so, that everybody knows it.

MR. SEVERANCE: They have not been able to prove it in this case.

MR. LINDABURY: And it has not been proven, and I object to these remarks and answers; and I shall move to strike out the answer awhile ago as not responsive, in so far as it refers to conditions before February, 1909.

By MR. LINDABURY:

Q. I am only asking, not for the reasons, but whether or not, in making this chart and stopping in February, 1909, you assumed, rightly or wrongly, I do not care which, that a condition of combination or artificially maintained prices existed before that date, which ended then? I understand you to say that was the assumption.

A. That was my information.

Q. I object to that, I do not care what your information was. I only want to know whether that was the assumption upon which you stopped that diagram.

A. I do not consider it an assumption. I consider it a reason, from knowledge.

MR. SEVERANCE: I think that should be stricken out.

MR. LINDABURY: Yes; that should be stricken out.

MR. SEVERANCE: He has stated that he got it from newspaper reports and——

MR. COLTON: From the trade journals.

MR. DICKINSON: I think you are quarrelling over a term. Mr. Lindabury means that is the theory on which the table is made.

MR. LINDABURY: Yes; that is the theory.

MR. DICKINSON: The Doctor objects to the word "assumption."

MR. LINDABURY: I say, assumed it, rightly or wrongly.

MR. DICKINSON: I know, but the Doctor, I think, attributes a different meaning to the term "assumption" from what you do.

MR. LINDABURY: Probably.

MR. DICKINSON: That is the theory upon which the table is made. That is what I understand to be the meaning of your question?

MR. LINDABURY: Yes; that is what I meant; that it was made upon that theory. I said "rightly or wrongly," I do not care which; I only want an explanation.

MR. DICKINSON: I think it is clearly made on that theory. That is my understanding of it.

By MR. LINDABURY:

Q. Now I come back to the question that I started with, Doctor, and ask you whether or not, as a matter of fact, if you include the remainder of the decade, from 1901 to 1910, it would not have shown a lower average price of steel products than is shown by the part of it which you selected.

A. Slightly lower; yes, sir.

Q. If you added the two years that have succeeded that period, it would be very considerably lowered, would it not?

A. Yes. Those figures are shown in the tables also.

Q. I did not ask you that at all. I say, if you should add the figures for these two years, the result would show a considerably lower average, would it not?

A. Somewhat lower. Not very considerably.

Q. You have said considerably lower. Make it "somewhat," then.

A. Yes.

Q. Very well.

A. I said——

Q. It is not necessary for you to add anything to that. Doctor, did you ever compare the cost of production of steel products with the selling price of those products during either of these decades, for the purpose of ascertaining the spread?

A. I have made tentative comparisons. I have not completed the examination as far as it should be gone into before I make a final answer.

Q. The cost of labor has very greatly increased during the last decade, has it not?

A. You mean the rate of wages?

Q. Yes. I mean the cost of labor.

A. The cost of labor in the last decade, for many iron and steel products, is lower than it was in the preceding decade.

Q. The wages are considerably higher, are they not?

A. The rate of wages is often higher, but the actual cost per ton of product is often very much lower.

Q. In what?

A. Pig iron, for example?

Q. Will you please answer as to the production of steel itself, and not of pig iron? I am speaking of the cost of producing steel products, as distinguished from mining ore or making pig iron.

A. I have not the figures for the conversion of pig iron into steel definitely in my mind, or for the labor cost of rolling steel, so that I can not answer positively. I answered for pig iron because I had that positively in my mind.

Q. Don't you know, Doctor, that the spread between the

price of pig iron and the price of steel products has been steadily narrowing during the last ten years?

A. No; I do not. I doubt it. It is perfectly evident on the diagram, if I may consult the diagram.

Q. You may consult the diagram, or anything else you want to.

A. The spread or the margin between the prices of billets and of Bessemer pig iron shows a distinctly fluctuating tendency in the width of the margin. The size of it depends chiefly, and quite naturally, on how high the prices of pig iron are. When the prices of pig iron are high, the margin is wide, and when the prices of pig iron are low, the margin is apt to be narrow.

Q. You have not answered my question.

A. I say, it has fluctuated greatly.

(By request, the stenographer repeated the last two questions and answers.)

Q. I did not mean to ask you with regard to billets only, but steel products of all kinds; the average price of steel products such as you have been talking about here today, rather than one particular one. Have you anything that shows that spread? If you have not, I will not trouble you about it.

A. I shall try to answer it, if I can find something that shows just what you want. I took billets because billets are, in the first place, an article that has moved under natural competitive conditions.

Q. It is not for you to take a selected article, Doctor.

A. In the second place——

Q. (Interposing) It is for you to answer my question, and for me to make the selection.

I asked you as to steel products, generally. If you can tell us, do so. If you can not, please say so, and do not try to find something else.

A. I could not tell you offhand. If you want me to look, I will try.

Q. You can look among anything you have here. I shall not have time for you to go back to the Bureau of Corporations to look.

A. I do not think it would be safe to answer that question

without platting the curves. I might plat these curves, or I could take the tables and compute the differences.

Q. We can do that ourselves. All the information you have upon that subject, or all that is to be found in your tables, I suppose, is charted here, is it not, in the various charts you produced?

A. No. There is more in the tables than in the charts.

Q. Between them, they contain all the information?

A. All that is on the charts is contained in the tables; and there is more in the tables than on the charts.

Q. We can examine the charts for ourselves, and find out what they show.

Do you happen to know whether or not any of the fluctuations in the price of steel products, as shown on your charts, was occasioned by strikes, or other circumstances of that kind, Doctor?

A. There were, for a few products, some prices in which the strikes showed a perceptible influence. The most striking was coke, tables of which are shown. That was in 1902 and 1903. The Anthracite Coal Strike resulted in a tremendous rise in the price of coke. That, to some extent, affected pig iron and steel products. That was the most important strike affecting the iron and steel trade throughout this period.

Q. Were there any other strikes that affected these prices that you have charted?

A. I do not think there were any other very important strikes, so far as the effect on prices went.

Q. I see your diagram No. 4, Government Exhibit No. 246, shows black sheets running pretty well up in 1901. Do you know what occasioned that?

A. I believe there was a sheet strike in that year.

Q. You believe there was? You have some information on that, have you not, as a basis for your belief?

A. I can not say, offhand.

Q. You do not remember?

A. I have studied the history of the trade.

Q. You mean you are——

A. (Interposing) Looking at that diagram, I believe that was the particular cause of an apex in the curve there. I

think there was a strike in bars at one time, but I have forgotten in what year.

Q. You did not remember those things yesterday when you were testifying?

MR. DICKINSON: He was not asked about them.

MR. SEVERANCE: He gave reasons why these lines went up and down.

MR. LINDABURY: He was not asked about a good many things that he testified to. You called his attention to this apex in black sheets, but he did not remember, then, that it was produced by a strike.

THE WITNESS: I did not associate the strike with that movement at that time.

MR. SEVERANCE: You associated the organization of the Corporation with it, yesterday.

THE WITNESS: The high price at that time, generally, was not due to that strike.

By MR. LINDABURY:

Q. You mean, the high price, as indicated by other curves than that one which runs up out of sight in September, 1901?

A. I think that that one, or my best recollection is that the high point in April was not due to the strike.

Q. You assume that was due to the organization of the Steel Corporation?

A. I think that that did not tend to make the curve go down.

Q. The curve did immediately go down, did it not?

A. It went up, just at the formation of the Steel Corporation, and then went down a little bit.

Q. Why do you say it went up after the formation of the Steel Corporation?

A. Because it was formed in March, and the price was higher in April.

Q. You know it was not formed in March, do you not?

A. It was organized before March, and it began business April 1, 1901.

Q. But at a later date, was it not? It began as of April 1, but later than that, did it not?

A. I do not think so.

Q. Do you mean to swear that the price of these black sheets went up at all after the Steel Corporation began operations, as indicated by that chart, or known to you in any other way?

A. I swear that according to my best knowledge and belief, that chart is correctly depicted. You ask if the price went up. I say it is higher in April than in March.

Q. You said yesterday that the chart did not show the time in the months that the prices went up, but simply showed the high price of the month?

A. No. It shows the average of the month, and that point is the month's average price. This point (indicating on chart) is the month's average price for March, which is $3.10 per hundredweight, as against $3.25 per hundredweight in April.

Q. What did the price go down to in May?

A. It went down to $3.20 per hundredweight in May.

Q. To what did it go down in June?

A. It was the same in June.

Q. To what did it go down in July?

A. It went down to $3.03 per hundredweight. That is an average, not a quotation.

Q. Then there was a strike, was there not?

A. I believe that that peak in the curve——

Q. (Interposing) Don't you know there was a strike there?

A. My best recollection is that there was a strike that influenced the curve at that point.

Q. When the strike was over, what did it go down to?

A. I have not an exact recollection of when the strike was over, so I can not say that.

Q. Assume that the time when it was over is correctly indicated on your chart. When was it then?

A. The chart does not pretend to show when strikes were over.

Q. Well, assume that it was over when that high price shown there ended.

A. I will answer it in this way: In October, 1901, the

price had declined to about $3.12 per hundredweight, as compared with a much higher price in September.

Q. What was it the middle of September? What was the average September price?

A. About $3.58.

Q. What was it the middle of October?

A. About $3.12.

Q. What was it the middle of December?

A. About $2.90.

Q. Then it went up a little, did it not?

A. Yes.

Q. Indicating competitive conditions, I suppose?

A. There was not much competition—

Q. Did it indicate—

MR. DICKINSON: Let him finish.

By MR. LINDABURY:

Q. Does the chart indicate competitive conditions at that time?

A. Not to any one who has an understanding of the trade at that time.

Q. Does the chart, of itself, on the face of it, to a man who sees that and has only the information that that gives him, indicate competitive conditions as you have described them yesterday?

A. It indicates neither one thing nor the other.

Q. It went up again, then, did it not?

A. It went up.

Q. To what?

A. To about $3.00 per hundredweight, in February, 1902.

Q. How long was it in getting up from the low price in the middle of December?

A. Two months.

Q. How long did it stay at that price?

A. About three months.

Q. Then what did it do?

A. It began to decline.

Q. That was another indication of competitive conditions,

was it not? Or are competitive conditions indicated by the rise in price only?

A. No. I think that competition was beginning to appear at that time.

Q. Let me see. It got down, in the middle of June, 1902, to what? $2.90, was it not?

A. About $2.90 per hundredweight.

Q. How long did it take to get down there from $3.00?

A. Two months.

Q. Was it gradual?

A. There was a decline in May also.

Q. Does that indicate a competitive condition?

A. It may or may not.

Q. Of itself, the fluctuation, as shown here, does not indicate anything?

A. No; that is not so. The fluctuation may plainly indicate a competitive condition, or the horizontal line may plainly indicate an artificial price control. But some fluctuations are not due to competitive conditions, as, for example, this peak where there was a strike.

Q. Excluding strikes, or conditions produced by strikes does this general fluctuation shown on this line of black sheet prices indicate competitive conditions?

A. Between the middle of 1899—

Q. I said generally. I am asking about the whole of it?

A. Some parts of the fluctuations correspond to and indicate competitive conditions. Others do not. This correspondence is, for example, seen by the parallelism with the price curves of other products which are controlled by competitive conditions.

Q. Then, as I understand, taking the fluctuations by themselves, without regard to the course of other products, they do not indicate competitive conditions, or anything else. Is that right?

A. No; that is not so. Even if a person knew nothing about the iron and steel trade whatever, or any other product, he could still tell from these charts that certain prices were clearly competitive, and others were prices maintained by artificial control.

MR. DICKINSON: Would you mind having the witness elaborate that a little more fully, to save me the necessity of questioning him on it later?

MR. LINDABURY: I should not like to deprive you of that opportunity, Judge.

MR. DICKINSON: Very well.

MR. LINDABURY: I think I shall do it, but I shall do it not by telling him to elaborate. You are able to do that. It would not be wise for me to do it.

MR. SEVERANCE: That is rather unnecessary to tell this witness, anyway.

MR. DICKINSON: I object to that comment in the presence of the witness. It is an imputation against the witness. There has been too much of that said and done. It would not be permitted in a Court.

MR. SEVERANCE: A good deal that he has said would not be permitted in a Court.

MR. DICKINSON: But your remedy is by exception and a ruling of the court.

MR. SEVERANCE: And a ruling would be given very quickly.

MR. LINDABURY: I do not conceive that the provocation would be permitted in Court.

By MR. LINDABURY:

Q. Do I understand you to say that these fluctuations, of themselves, do or do not indicate competitive conditions?

A. It depends on which fluctuations are indicated.

MR. COLTON: You have spoken of particularly the sheet fluctuations. Now you speak of "these" fluctuations. It seems to me that is indefinite.

By MR. LINDABURY:

Q. Do the fluctuations that are shown on your charts, one or all of them, at different times, generally indicate competitive conditions, or do they not, in and of themselves?

A. In most cases the fluctuating prices indicate competitive conditions; but fluctuations of prices may occur from other causes; that is to say, even where the price of a commodity is under absolutely monopolistic control, its prices

may fluctuate from powerful causes, such as strikes, or extraordinary changes in demand or supply, which compel the monopolistic seller of the product to lower his price somewhat, or give him an opportunity to get more than he has already been content with. Of course, when it comes to a strike or other violent disturbance of the market, the prices will fluctuate. In general, however, apart from very marked changes in supply and demand, possibly sometimes in increasing power on the part of the combination which controls these prices, apart from those things, the fluctuation in prices will, generally speaking, be indicative of competitive price-making; and the horizontal prices for the products which are here depicted are invariably indicative of artificially controlled prices.

Q. So you would say, and it is your opinion, that fluctuating prices do not always or necessarily, indicate competitive conditions, but that constant prices always do? That is your theory, is it not?

A. For these products.

Q. These particular ones?

A. I am not speaking of any products you might cite to me, but of the products we are talking about.

Q. Well, as to the products we are talking about, it is your opinion that a constant price, necessarily—

A. (Interrupting). For a long time.

Q. Oh! I will finish my question. That a constant price for any considerable time necessarily shows an artificial maintenance of prices?

A. I think that is so.

Q. That is your view about it?

A. Yes.

Q. Your whole testimony is based upon that theory, is it not?

A. It is not based on theory, but upon my knowledge of the business.

Q. With regard to those comparative tables, your knowledge of the business gotten at that interview at Mr. Hanna's office, or from reading?

A. From considerable study and investigation.

Q. Investigation in books?

A. In books—

Q. In Germany?

A. And in the field.

Q. Where in the field?

A. Visiting people in the iron and steel trade.

Q. Where?

A. I visited people at the works.

Q. Where?

A. I have been over that. I named some of the works I visited in the Pittsburg district this morning in response to your questions. I visited other works in the Lake Erie District.

Q. You did not tell us about that this morning?

A. You did not ask me.

Q. What works were they?

A. The Lorain Works.

Q. Whom did you see there?

A. I have forgotten the individuals I met.

Q. Who gave you any information that enlightened you on this subject?

A. I do not recollect now just how far the conversation extended.

Q. Did he tell you a constant price on these products indicated a combination?

A. No.

Q. Did anybody in Pittsburg tell you that a constant price of these products indicated combination, or artificial prices?

A. I do not recollect anyone telling me that.

Q. Nobody ever told you that, did they?

A. Oh, yes; I have had my attention called to that fact.

Q. Somebody has told you that?

A. Other people have had that same idea.

Q. I think you gave us some figures regarding the southern foundry iron prices, did you not?

A. Yes, sir.

Q. Let us have those, please.

A. They are on one of the tables over there.

Q. I think you showed a larger increase in those during the last decade than in any other product, did you not?

A. I cannot recollect now.

Q. It seemed to me so as you read it.

A. That increase, if you want to get that, would be shown in another table.

Q. I believe I am right in my recollection that the price of southern foundry iron increased more than any other product shown on your table?

A. No, sir. Ore.

Q. What was that?

A. Ore on this table is more, I think.

MR. COLTON: Ore at the mine?

THE WITNESS: Ore at lower Lake ports; the Mesabi-Bessemer ore.

By MR. LINDABURY:

Q. Greater than any production from ore. I was not thinking of ore. The price of southern foundry iron increased more than any other product from ore, did it not?

A. More than any on this table (referring to table No. 33, Government Exhibit No. 239.)

Q. And that shows products—

A. All the products under consideration—domestic.

Q. What was the increase in southern foundry iron?

A. For the period indicated on Table 33 (Government Exhibit 239), ending January 1, 1895, to December 31, 1898, as compared with January 1, 1899, to February 18, 1909, the increase was from $9.93 per ton to $16.85 per ton, an increase of $6.92, or 69.7 per cent.

Q. As contrasted with what price for northern iron?

A. The percent for northern irons, that is to say, for Bessemer iron, was 61.7 per cent.

Q. How much of that increase, if you know, was before the Steel Corporation took over the Tennessee Coal & Iron Company? Have you anything to show that?

A. That is not shown in any of the computations here and would have to be made a matter of computation.

Q. You happen to know, do you not, that the price has not

increased since then, that all of that increase was before the Steel Corporation took over the Tennessee Coal & Iron Company?

A. The largest advances in price were before the acquisition by the Steel Corporation of the Tennessee Coal & Iron Company.

Q. The price has never reached that average since the Steel Corporation took over the property, has it? I think you must know that.

A. I do not believe it has.

Q. Do you not know generally that it has not, that that is a higher price than it has ever been sold at since that time?

A. I will look.

Q. If you have it there, suppose you do so.

A. (After examination of table.) The average price of foundry pig iron, from January 1, 1899 to February 18, 1909, as shown on Table 33, Government Exhibit No. 239, was $16.85 per ton. Subsequent to the acquisition of the Tennessee Coal & Iron Company by the Steel Corporation, towards the close of 1907, that is to say during the years 1908, 1909, 1910, and 1911—

MR. REED: Excuse me for interrupting, but the average you have given us stops on February 18, 1909.

THE WITNESS: That is what I read.

By MR. LINDABURY:

Q. My question was whether or not the price has reached that average since the Steel Corporation took over the Tennessee Coal & Iron Company?

A. The average prices for the said four years were respectively, as follows: 1908, $15.54 per ton; 1909, $16.12 per ton; 1910, $15.16 per ton; 1911, $13.68 per ton.

By MR. SEVERANCE:

Q. The average for those four years, as I compute it, is $15.125. Will you say if that is correct?

A. Yes, that is correct.

By MR. LINDABURY:

Q. Have you your foreign charts here?

A. The chart that was produced is here, I believe.

Q. May I see it?

A. Here it is (witness producing the chart referred to).

Q. Prices of products generally are and have been higher in the United States for many years than in Europe, have they not?

A. That is, iron and steel products?

Q. No, not iron and steel products, but products generally, manufactured products of all kinds; prices rule higher here than there, do they not?

A. Prices rule generally higher, according to my personal experience, in the United States than in England; but I would not be so sure that that was so between the United States and Germany.

Q. The price of manufactured products as a rule you do not think are higher here than in Germany?

A. That is a pretty big question. I answered it by saying that I would answer in the affirmative as between England and the United States.

Q. In a very general way—

A. In a very general way I would not be sure which would be the higher between the United States and Germany, but in England they would be lower. That is my information and belief.

MR. DICKINSON: Do you mean every kind of manufactured product?

MR. LINDABURY: Yes, generally.

THE WITNESS: I understood "all products."

By MR. LINDABURY:

Q. All manufactured products, I said. Would you wish to modify your answer if that were the question?

A. No, but I would not be sure in either case.

Q. But would your answer be different?

A. No.

Q. Then it would not make any difference whether you understood it one way or the other. I intended to limit it a little by speaking of manufactured products only.

Now, with regard to steel products, except in times of de-

pression here have not the prices for a great number of years, as long as you have lived, been higher here than in England or Germany, except in times of depression in this country, of course?

MR. SEVERANCE: You mean on an average?

MR. LINDABURY: I mean, have not the average prices of steel products been higher here than in either England or Germany for forty years, save in times of depression in America?

A. I think that is not strictly so, because I do not consider that 1911 was a year of depression; nor do I consider that 1898 was a year of depression, as I have already explained; and the prices then were lower in the United States for iron and steel products generally than in Germany or in England.

By MR. LINDABURY:

Q. Are you prepared to take the position that there was no depression in the iron and steel industry in America in 1898?

A. I certainly take that position.

Q. I see. There was a very bad panic a few years before that in America, was there not?

A. Yes; in 1893.

Q. That was one of the severest we have ever had here, was it not?

A. It was the severest in my recollection.

Q. Never mind about your recollection, but take this historically. Was it not one of the most severe panics we have ever had?

A. One of the two or three severest.

Q. When before it have we had such a severe panic?

A. Possibly in 1873.

MR. DICKINSON: That was the Jay Cook failure, was it not?

MR. LINDABURY: Yes, the panic of '73.

By MR. LINDABURY:

Q. Except the 1873 panic, we have not had one as severe as the panic of 1893, have we?

A. Probably not since 1837.

Q. And that you do not remember very distinctly, do you?

A. Not from personal recollection.

Q. Do you mean to say that the influence of the panic of 1893 had entirely disappeared by 1898?

A. I think the influence of the panic had entirely disappeared. There was a very large production and a very profitable business in the iron and steel trade in that year.

Q. I will not go over that with you any further, because you have already told us your views about that. When did the depression of 1896 begin?

A. It was a short depression beginning at the end of 1895 and lasting throughout 1896 and continuing that way into the early part of 1897.

Q. What was the occasion of that, if you remember?

A. The most striking feature was the excitement over the presidential election and the general let up in business activity which has occurred in most recent presidential elections.

Q. The presidential election occurred in November, 1896, did it not?

A. The election of the electors, yes, sir.

Q. The popular vote was given then?

A. Yes.

Q. That is when the prices began to go down most sharply, is it not?

A. I have not a positive recollection.

Q. Your chart shows that?

A. Yes, the chart will show it.

Q. Would you like to look at it? I will show it to you. The depression was much greater during the next six months than it was during the six months preceding the election, was it not?

A. Well, I do not think that depression is measured necessarily by the level of prices.

Q. The decline in prices—

A. I had not finished my answer. May I finish it?

Q. Oh, yes; I beg your pardon.

A. (Continuing). There was a great increase in produc-

tion following 1896, so that I do not consider the prices measured the relative degree of depression.

Q. Have you anything here to show what you call the increase in production at that time?

(The witness produced one of the tables already referred to and introduced in evidence.)

Q. (Continuing). An increase from 5,000,000 to 7,000,000, apparently (referring to figures on one of the tables).

A. That is a large increase, from 5,200,000 tons to over 7,000,000 tons, in crude steel.

Q. But there had been a falling off from 1895 to 1896, had there not?

A. The production in 1896 was lower than in 1895, but 1895 was a good year, and was, nevertheless, more than a million tons lower than 1897.

Q. But 1896 was nearly a million tons lower than 1895, was it not?

A. Yes, that is a year of depression; but 1895 was not a year of depression, and 1897 was a good deal better year than that in production.

Q. You got the German rail prices from an official of the German Government, I understood you?

A. Yes, sir.

Q. Those were the prices, I suppose, that the German Government paid for rails?

A. The Prussian-Hessian Railway System. Prussia and Hesse have a joint railway system.

Q. Under government ownership and control?

A. Yes, sir.

Q. So that the prices, as I said, that you got and put upon your table were prices which the Government paid for rails?

A. They were the contract prices.

Q. Well, the prices paid?

A. I presume so.

Q. As per contract, or something?

A. Yes.

Q. But they were not mere contract prices—

A. Yes, I understand they were the prices paid.

Q. That is, they were given to you as such?

A. Yes, sir.

Q. And believed by you to be correct?

A. Yes, sir.

Q. Are rails sold over there to private persons or firms or corporations?

A. There is very little, if any, market for standard rails for domestic use in Germany.

Q. So that the domestic sale of standard rails by the German manufacturers is to the Government, practically all?

A. Yes, sir.

Q. All of your quotations are of governmental prices, or prices paid by the Government?

A. For rails?

Q. Yes, sir, I mean for rails, yes.

A. Yes.

MR. LINDABURY: That is all.

MR. DICKINSON: That is all, Dr. Walker. We are much obliged to you.

(Thereupon, an adjournment was taken until tomorrow, Thursday, November 21, 1912, at 10:30 o'clock a. m.)

THIRTY-FOURTH DAY.

COMMERCE COURT ROOM, SOUTHERN BUILDING,
WASHINGTON, D. C.,

THURSDAY, NOVEMBER 21, 1912.

The hearing was resumed at 10:30 o'clock a. m., before SPECIAL EXAMINER, JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON, MR. COLTON and MR. CORNEAU.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE and MR. REED.

JEAN PAUL MULLER,

a witness called on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. CORNEAU:

Q. State your full name.

A. Jean Paul Muller.

Q. What is your business?

A. Resident partner of Marrick, Mitchell, Peat & Co., chartered accountants, with thirty-two offices in various parts of the United States, Canada and Europe.

Q. You, yourself, are an accountant, I suppose?

A. I am.

Q. Will you just tell us what your preliminary training and your subsequent experience as an accountant has been, first in a general way, and then we may want to go into some detail.

A. I graduated from the Royal Saxon Academy of Commerce, one of the European training schools for the consular service, on the accountants side, I think ranking fifth in a class of about 62; then four semesters with political economy as

my major subject, at Leipsic; then two years in different houses in England; then took my preliminary, as well as intermediate examination for a chartered accountant during that same two years; was appointed Secretary to the German Industrial Commissioner for the far East, and made an extensive study of business conditions and transportation conditions generally during the subsequent two years. From 1891 to 1895 was in charge of the imports, the largest import concern in the United States in those days; from 1895, I practiced accountancy as a profession in Baltimore, Maryland; studied law from 1898 to 1901 and admitted to the Bar of Maryland, librarian and lay member of the faculty of the Baltimore University; November 1st, 1906, passed a civil service examination as accountant, qualified to conduct field investigations for the Department of Commerce and Labor, but refused appointment under it; finally accepted a service with the Interstate Commerce Commission under the same rating, on April 6th or 7th, 1907. As an employee of the Interstate Commerce Commission, I was detailed to act as accountant for the Commission in the southwestern rate cases instituted by the Texas State Railway Commission in the so-called Reno Case, in the eastern and western class rate case, I. C. C. Dockets 3400 and 3500, in the general investigation under I. & S. Dockets No. 26, into lake cargo coal rates, and investigations involving the anthracite rates, so-called Meeker Case, and in a number of others perhaps of lesser importance.

Q. Were these investigations you speak of made while you were connected with the Interstate Commerce Commission?

A. They were.

Q. Are you still connected with the Interstate Commerce Commission?

A. No, sir.

Q. When did you end that connection?

A. I have been suspended at my own request at different times, to serve other departments of the Government for short periods, and finally resigned from the Interstate Commerce Commission on July 29, 1911, to devote myself to private practice.

Q. Since that time have you been concerned in any in

vestigations of railroad rate subjects in general practice, and if so, tell us a little about that.

A. I have made an investigation for the Pittsburgh Coal Company into costs of service in transporting lake coal from the so-called Pittsburgh District by way of Lake Erie ports to the Northwest. I made similar investigation for the New Pittsburgh Coal Company, of Columbus, Ohio, involving different carriers and different routes, but the same subject generally; made an investigation for the Pittsburgh Steel Company, treating of assembling costs of raw materials, for some 44 or 45 different blast furnace points; made a subsequent investigation for the Birmingham pig iron interests, into the cost of transportation of pig iron to central western points through the Ohio River crossings, and the St. Louis gateway; made an investigation for the New England Foundrymen's Association into the cost of transporting pig iron from the Birmingham and Chattanooga districts to Boston, Providence and interior New England points; made, also, an investigation for the Youngstown and Valley interests into the cost of transporting ore from the Northwest to Youngstown and Valley points.

Q. In the course of these different investigations, have you had occasion to analyze the items of cost of transportation of different commodities, and, more especially, of ore, on different railroads?

A. I have.

Q. Have you testified as an expert in some or all of these matters?

A. As an expert accountant; yes, sir.

Q. Before the Interstate Commerce Commission?

A. Yes, sir.

Q. Have you investigated the subject of transporting ore over the Bessemer & Lake Erie Railroad, the Duluth, Missabe & Northern Railroad, and the Duluth & Iron Range Railroad?

A. I have, in I. C. C. Docket No. 4608.

Q. That is one of the cases you mentioned a few minutes ago?

A. The last I have mentioned.

Q. Did you, in that connection, analyze the accounts of those railroads, for the purpose of apportioning expenses between freight and passenger service, and between ore and other commodities in the freight service?

A. I did.

MR. SEVERANCE: Your question was whether he analyzed the accounts. I understand that these statistics he has made up are analyses made from their reports.

MR. CORNEAU: I was going to ask that.

MR. SEVERANCE: But this would indicate that he had been through their books, and I do not suppose you mean that.

MR. CORNEAU: I was going to ask that question.

By MR. CORNEAU:

Q. Just tell us what data you had before you for the purpose of making the analyses.

A. I had the properly attested report of the Bessemer & Lake Erie and the Duluth & Iron Range, and the Duluth, Missabe & Northern Railroad Companies, as made to and filed with the Interstate Commerce Commission for the year ended June 30, 1911, in each case.

Q. Are all the figures that you used found in those reports?

A. All of them; yes, sir.

Q. Have you before you tables prepared by you in that connection?

A. I have the original exhibits, as filed with the Interstate Commerce Commission, or at least a copy of the original exhibits.

Q. That is a printed copy?

A. A printed copy, yes.

Q. Have you verified that copy?

A. I have. I have found it, in every particular, the same as the original.

MR. CORNEAU: You have a copy there, have you not, Mr. Severance?

MR. SEVERANCE: Yes.

By Mr. Corneau:

Q. Will you turn to your table for the Bessemer & Lake Erie Railroad Company?

Mr. Severance: Which one do you mean?

The Witness: Page 93.

Mr. Severance: There are several of them. Do you mean Exhibit No. 40?

Mr. Corneau: No; page 36.

The Witness: Exhibit 6.

Mr. Severance: Then you were mistaken; it was not page 93?

The Witness: No.

Mr. Severance: Pages 36 and 37?

The Witness: Yes, sir.

Mr. Corneau: Let the record show that Exhibit 6 refers to the exhibit number in the Youngstown case, and not in this case, but we may for convenience refer to them by those numbers until the offer is made.

By Mr. Corneau:

Q. I observe that on this table, Exhibit No. 6 in the Youngstown case, the items are divided into five groups, marked general accounts one to five respectively, followed by a summary. Will you please explain the reason for grouping the items in that manner?

A. This corresponds, or in fact is identical with the classification of accounts prescribed by the Interstate Commerce Commission and now in force, and it includes under General account 1 those 23 primary accounts, expense heads, covering expenses caused by the activities of that group of railroad officers and employes whose duty it is to see that there is available for efficient use a line of road over which persons and goods may be safely and profitably transported.

General Account No. 2 includes under twenty-nine primary account heads, expenses caused by the activity of that group of railroad officials and employes whose duty it is to see that there is available for efficient use a suitable number of efficient vehicles by means of which and in which persons and

goods may be safely transported over the roads provided by group 1.

MR. SEVERANCE: What are you reading that from, if I may ask?

THE WITNESS: I am reading this from the introduction to a similar exhibit in 4800 which was made necessary by the line of examination in 4608. Some of the attorneys in that examination seemed to think it was necessary.

MR. SEVERANCE: That is all I want to know. I did not know but what it was to be found on this paper.

THE WITNESS: General Account No. 3 includes under eight primary account heads expenses caused by the activity of that group of railroad officers and employes whose duty it is to see that profitable use is made by the greatest number of persons and the largest volume of goods, of the facilities provided by groups 1 and 2.

General Account 4 includes under forty-five primary account heads expenses caused by the activity of that group of railroad officers and employes whose duty it is to see that all persons and goods offering for transportation are safely carried over the road indicated by Group 1, by means of vehicles provided by Group 2, and under the terms arranged by Group 3.

General Account 5 includes under eleven primary account heads expenses caused by the activity of that group of officers and employes who by delegated authority represent the stockholders or other owners of the transportation plant and whose duty it is to properly supervise and co-ordinate the activities of groups 1, 2, 3, and 4, so as to procure concerted action without the duplication or waste of effort at minimum cost and maximum profit.

By MR. CORNEAU:

Q. These five general accounts may be more briefly described as Maintenance of Way and Structures, Maintenance of Equipment, Traffic Expenses, Transportation Expenses, and General Expenses, may they not?

A. They may.

Q. For the mere purpose of description of the accounts without going into the reason of them?

A. Yes.

Q. That is followed, then, by a summary. That summary is a summary of the items on the preceding divisions, is it?

A. You are speaking now of pages 38 and 39?

Q. Yes; at the bottom of page 38 and page 39.

A. There is an analytical summary which simply indicates or summarizes the manner in which and the volume in which the 116 accounts have been divided between freight and passenger, and setting forth in nine lines the specific performance units used as bases for these divisions.

Q. I do not quite understand what you mean by the specific performance units.

A. Take the second line, under the heading Analytical Summary, I say "Distributed on the basis of combined road and switching locomotive miles." The road and switching locomotive miles here,—the total volume during the year—have been used to divide a certain number of specific items up above.

Q. Shown in the preceding parts of the table?

A. Yes, shown in the preceding parts of the table.

Q. The exhibit as a whole, then, is made for the purpose of dividing the items of expense as between freight and passenger service, is it not?

A. Precisely, and the chief reason,—

MR. SEVERANCE: That answers the question.

MR. CORNEAU: Well, I do not know whether it does or not.

MR. SEVERANCE: Yes; you asked him if that was what it was for, and he said yes. What is the use of his making a speech all the time? That is the fault of expert witnesses. They are apt to do that unless they are cautioned.

MR. CORNEAU: I object to the interruption and to the statement that the witness is attempting to make a speech as wholly uncalled for by anything that has occurred thus far, and I will ask Mr. Muller to continue if he has not completed his answer.

A. (Continuing). The Interstate Commerce Commission has never prescribed any methods or rules for dividing freight from passenger expenses and reporting them separately, and there are, of course, quite a number of items which in their nature are such that they can be charged to either freight or passenger service by the carrier at the time the expenses are incurred or accrue. There is also a large number of expenses that have to be divided upon some more or less arbitrary basis, and that division, of course, has been attempted by a great many people, and there is nothing authoritative except that it is based upon individual judgment—

Q. The individual judgment of the accountant?

A. The individual judgment of the accountant.

Q. Now, taking up these tables which comprise Exhibit No. 6, in the Youngstown case, I observe that in the first column to the left of the names of the primary accounts, there are numbers. Those numbers refer to what?

A. Those numbers refer to the official designation of the account in the Interstate Commerce Commission's own classifications.

Q. I see. Then the names of the accounts, I presume, shown in the next column, are likewise the Interstate Commerce Commission's designation of the different accounts?

A. They are.

Q. Corresponding to those numbers. The next column is headed "Group," and in that column are set down different letters. To what do those letters refer?

A. Those letters refer directly to the regrouping for the purpose of division between freight and passenger, and Group A—

Q. (Interposing). Just a moment. Who did that grouping?

A. I did.

Q. That is your own grouping of different items of expense; is that it?

A. It is.

Q. Now, will you just describe that grouping, please?

A. Group A comprises items which are chargeable direct

to freight or passenger service without division. Group B comprises items chargeable to freight and passenger service on the basis of locomotive miles run in each service, under three sub-heads, marked Ba, on the basis of road locomotive miles, items Bb, on the basis of yard locomotive miles, and items marked Bc on the basis of road and yard combined locomotive miles.

Items indicated under C comprise items directly affected by movement of trains as units, and therefore divisible on the basis of train miles run in each service.

Items marked D are such as are directly affected by the movement of locomotives and cars over the road as wheeled vehicle units, and therefore divisible only by the use of a composite basis.

In this instance one-half of the respective expense has been divided on the basis of locomotive miles in each service; the other half on the basis of car miles in each service.

Q. Before you leave that group, will you explain a little more in detail why you took that division of one-half to locomotives and one-half to car miles, respectively?

A. The methods previously used for the division that have come to my knowledge were on the basis of train miles most frequently, and the items subject to that division were mostly maintenance of way and structure items. The train mile division did not seem very satisfactory to me.

MR. SEVERANCE: That has been the customary way to do it, has it not?

THE WITNESS: No, sir; there have been as many ways for this particular set of items representing about 15 per cent of the total operating expenses, on the average, as there have been accountants, practically.

By MR. CORNEAU:

Q. Right there, what sort of items of expense have you distributed on this basis?

A. Ballast, ties, rails, other track materials, roadway and track.

Q. Are those all of the items divided in that way?

A. Tunnels, bridges, trestles, and culverts are also under

maintenance of way; and structural work, equipment, repairs, renewals and depreciation under maintenance of equipment also come under that heading.

(The stenographer read aloud the answer of the witness as above recorded.)

By Mr. Corneau:

Q. In other words, you have allocated on the basis of car and locomotive miles those items of expense pertaining to the maintenance of the track over which the traffic runs, and the maintenance of the equipment running over the tracks; is that right?

A. No, the maintenance of equipment running over the track—

Q. I should say the maintenance of the equipment used in keeping the track in repair?

A. Yes, that is the idea; because that formerly was considered, and to all intents and purposes still is, a part of the maintenance of way expense.

Q. Now, will you continue, if you had not finished it—and I think you had not— your explanation of your reason for allocating one-half on the basis of locomotive miles, and one-half on the basis of car miles?

A. The chief reason why I have followed this system of allocation is that it is the result that comes nearer to the division used by the Wisconsin Railway Commission in the Buell Case, that used by another accountant, J. W. Hillman, in a number of subsequent cases, without the defects of those methods in the Buell and the Hillman cases; this method adopted here being intended for general application to all roads without variation, whereas the method adopted in the Buell case would necessarily vary with each different route, or with each different section of the country, and I was trying to perfect a method which would be applicable without variation to all the roads in the country, and have consistently applied the same methods to every road that I have been called upon to analyze.

Q. Have you ever had an opportunity to test the fairness of this arbitrary division or allotment of one-half to be divid-

ed on the basis of locomotive miles, and one-half on the basis of car miles?

MR. SEVERANCE: I object to any testimony as to any tests made on any line of road other than the Bessemer & Lake Erie, as incompetent and irrelevant.

By MR. CORNEAU:

Q. You may continue. The objections are not ruled on at this time.

A. The one specific instance in which a test was made was that of the I. & S. No. 26 investigation by the Interstate Commerce Commission, in which the Norfolk & Western submitted figures which practically bore out, at least so far as that road is concerned, my general result.

MR. SEVERANCE: I move to strike out the answer on the ground that it is evident that it is mere hearsay and incompetent and irrelevant.

By MR. CORNEAU:

Q. Will you please continue. That last group was Group D. Will you continue your explanation of the groups, if you had finished with reference to Group D. If there is anything you wish to add with reference to that you may do so, and if not you may take up Group E.

A. May I suggest, for the benefit of Mr. Severance, that I was the accountant in charge of the I. & S. Investigation referred to.

Q. Go ahead with Group E, then.

A. Group E comprises indivisible items under two heads, those marked with Ea covering buildings, fixtures and grounds and similar items relating to current operations as a whole, and which cannot be allocated, except upon the theory that such expenses are incurred and do accrue proportionately in the same measure in which each service is productive of results. That is, freight service revenue and passenger service revenue. And those marked Eb, covering advertising and so on, which are speculative in character and have no relation whatever to the results from operation during the period in which these expenses are incurred, which are therefore assess-

able on each branch of the service in proportion to its ability to bear them—that is, freight service revenue and passenger service revenue.

Group F comprises overhead charges, the first class marked a, being of a functional character. We include in those items such as superintendence, tools, stationery, printing, injuries to persons, joint facilities, and so forth, which relate directly to one of the four elementary activities previously mentioned, and therefore are distributable within each of the four general accounts, maintenance of way and structure, maintenance of equipment, traffic expenses and transportation expenses, in proportion to the ratio shown by the totals of all items in each of the four groups which have been previously more definitely allocated. I may say that that is a uniform method followed by all the accountants that have recently made any allocation.

Q. Is there another subdivision of that group?

A. Group Fb are the overhead charges of administrative character, practically all, in fact all, under the heading of general expenses, and distributed upon the ratio shown by the sum total of the other four general accounts previously allocated. That is also, I think, a standard method, and hardly subject to variation.

Q. Under the heading, "total for the year," there are two sub-columns, one headed "per cent," and the other "amount." Will you explain the items in those columns?

A. These percentages represent the ratio which the amount of each item bears to total operating expenses.

Q. Total operating expenses, or the total expenses under that particular account?

A. No, sir; the total operating expenses.

Q. Everything shown on all five accounts?

A. Precisely.

Q. I see. And the amount, I suppose, is the total of the items which are distributed in subsequent columns as between freight and passenger respectively?

A. They are.

Q. And those items are copied from the reports, pages 93 to 95, respectively?

MR. SEVERANCE: Of the report to the Interstate Commerce Commission?

THE WITNESS: Of the report to the Interstate Commerce Commission.

MR. SEVERANCE: Will you pardon me a moment, Mr. Corneau.

MR. CORNEAU: Certainly.

By MR. SEVERANCE:

Q. As I understand it, those items are the amounts upon which you base all your subsequent calculations?

A. That is correct.

Q. That is, you simply distribute those amounts in the methods you have described?

A. That is correct.

Q. Take those as your base.

A. That is correct.

By MR. CORNEAU:

Q. The next column is headed Items Distributed Without Division. That heading corresponds to your Group A, as I understand it?

A. That is correct.

Q. In the sub-columns under that heading you have various items set down. Are those items separately shown on the reports as charged exclusively to freight or passenger service, as the case may be?

A. Those items are so designated as to make it practically beyond a question that they are to be charged direct—

MR. SEVERANCE: (Interposing). I object to that, and move to strike out the answer as not responsive. The question was whether they were designated as such on the report. That does not call for any conclusion on the part of the witness.

By MR. CORNEAU:

Q. Well, let us take them up, then. One such item, if I read your table correctly, is "Electric Power Transmission." Account No. 15 in general account 1?

A. Yes, sir.

Q. That entire item seems to be allotted to passenger service. Why was that done?

A. That was done upon the specific report of the investigator who ascertained whether or not any electric power reported under this item was chargeable to freight or to passenger, and that is indicated to me by the fact that this item was left open and later inserted with pen and ink as Classification A.

MR. SEVERANCE: Left open and inserted where?

THE WITNESS: Left open originally on my working sheets. These are reproductions of the working sheets.

MR. SEVERANCE: I move to strike out the answer, as it now clearly appears it has no basis known to the witness for the classification made, and because it is hearsay and incompetent and immaterial.

By MR. CORNEAU:

Q. Let us take the next item apportioned in that way, which I make out to be Passenger-train Cars—Repairs.

MR. SEVERANCE: You do not need to spend any time on that. Of course that should be allocated in that way.

MR. CORNEAU: Yes. And the same thing of Passenger-train Cars—Renewals, Passenger-train Cars—Depreciation?

MR. SEVERANCE: That is perfectly apparent.

By Mr. CORNEAU:

Q. Freight-train Cars—Repairs, Renewals and Depreciation. The next item is Fast Freight Lines. That is perfectly plain. The next items are General Account 4, Weighing and Car Service Associations, Coal and Ore Docks. I guess those are perfectly plain without explanation.

MR. SEVERANCE: I should think so.

Q. (Continuing). The next items, Loss and Damage, Freight, and Loss and Damage, Passenger. Those comprise all the items. Now, with the exception of the item Electric Power Transmission, all of the other items show on the report themselves, I judge, from the naming of the accounts.

A. They do.

Q. That they are incurred on account of the freight or passenger service, respectively?

A. Yes.

Q. There seemed to be some uncertainty a few moments ago as to the next column, headed Distributed on Basis of Combined Road and Switching Locomotive Miles, and sub-columns Freight and Passenger. Will you just explain how you made your allocation, after arbitrarily dividing these items of expense, one-half to be allocated on the basis of locomotive miles, and one-half on the basis of car miles?

A. Each one of the next four columns shows the basic figures on the freight and passenger, respectively, and these basic figures are in detail set out on page 40 and page 41 of this exhibit.

Q. I do not think I understand that.

A. Take Distributed on Basis of Car Miles. The first column on page 37 shows 59,255,010 on the freight, and 1,836,286 under Passenger. Turn to page 40, Interstate Commerce report, or rather, the report of the Bessemer & Lake Erie Railroad to the Interstate Commerce Commission, for the year ending June 30, 1911, page 95, items 47, 52, 53 and 54. There is a typographical error in this print. The second 53 should be 54. Item 47 corresponds with that at the head of the freight column under Distribution on Basis of Car Miles, on page 37.

Q. In other words, you allotted to freight and passenger expenses respectively the ratio which the freight car mileage bears to the total of both freight and passenger car mileage, and the ratio that the freight locomotive mileage bears to both freight and passenger locomotive mileage?

A. Yes, sir.

Q. The next column consists of items distributed on the basis of train miles. Will you explain a little more fully than we could gather from the outlining of your groupings, the different reasons leading to the allocation of the items under Train Miles, as distinguished from Car and Locomotive Miles? Do you understand what I mean?

A. I think I do. The items allocated on the basis of train

miles are those which are directly incurred by the movement of trains as units, such as signal costs and station expenses.

Q. Despatching?

A. Train despatching; draw bridge operation; crossing flagmen and gatemen. Those are the main items, as I see them here.

Q. The next column, Distributed on Basis of Gross Revenue, the reasons for making those distributions I think you have explained sufficiently. And the same thing is true of the next column, headed Distributed on Basis of Primary Accounts 2 to 17, inclusive.

A. Which, of course, varies in each sub-head.

Q. Yes. The last column, headed "Percentage of" with sub-columns headed "Freight" and "Passenger", please explain what those percentages are.

A. Those percentages are the segregation of the original per cent, which covers the total for the year, and again relate to total operating expenses as 100 per cent. So the relative percentages, the 18.09 under Maintenance, is split into 15.237 for freight, and 2.853 for passenger. Under Maintenance of Equipment, it is 31.580 Freight, and 2.560 for Passenger.

Q. The explanations you have already made refer to the General Account No. 1. Are there any differences between that account and General Accounts Nos. 2 and 3?

MR. SEVERANCE: You mean as to method of allocation?

MR. CORNEAU: Yes, as to method of allocation.

THE WITNESS: There are none.

By MR. CORNEAU:

Q. Under General Account No. 4, the headings seem to be slightly different, there being columns headed "Distributed on Basis of Revenue Service, Locomotive Miles," and "Distributed on Basis of Relative Terminal and Yard Movements," and "Distributed on Basis of Train Miles."

A. That is the same as the 1, 2 and 3.

Q. Oh, yes; we have that last one. Just the two, then, are different?

A. Yes. There are no items under Account IV which are

distributed under the car mile basis. There are quite a number of items, from 67 to 78, inclusive, which relate directly to yard and terminal movements, and Items 80 to 85, which relate directly to road movement, and those items have been segregated upon the proper unit, "Locomotive Miles," which are applicable to these respective items.

Q. Have you now explained all of the items under all the different heads of distribution?

A. I have, and the processes in producing the figures there at the column head, as I have said, are purely arithmetical processes, which are set forth in detail on pages 40 and 41, and can be checked.

Q. Referring to those pages, state whether or not the items shown first on page 40 as items bearing numbers between 37 and 64, inclusive, are taken directly from the reports of the Bessemer & Lake Erie Railroad to the Interstate Commerce Commission.

A. They were.

Q. There seem to be some foot notes at the bottom of that page. Will you please explain them?

A. The foot note on page 40 indicates the manner in which the small item of Special Locomotive Miles has been segregated or allocated between freight and passenger service, while the foot note on page 41——

Q. I have not come to page 41 yet. I did not quite understand your explanation of the foot note on page 40.

A. On page 40 you have, under Item 40, the third line, Special Locomotive Miles, 693, which item had to be segregated to Freight and Passenger, respectively. This is done upon the theory that the special locomotive miles were incurred in the same way as regular locomotive miles would be; in other words, that the special locomotive would haul the same number of passenger cars that were used in the passenger service as a regular passenger train; in the same way, that a special freight locomotive would haul the same number of cars as an ordinary freight locomotive.

Q. In other words, you divided the number of special freight car miles by the average number of freight cars per train mile, to get at the number of locomotives used in haul-

ing those trains; is that right? And then you apportioned between the freight and passenger service?

A. That is, in substance, what the results are, yes.

MR. SEVERANCE: Mr. Halstead calls my attention to the fact that opposite 40 you have 838, and down at the bottom of the page you have 828. It is not a very large discrepancy, but it seems to be a discrepancy; one figure is evidently wrong.

THE WITNESS: Probably in transferring——

MR. SEVERANCE: Which do you want to stand?

THE WITNESS: 828 is right, because that is the calculation which has been transposed.

By MR. CORNEAU:

Q. Will you please explain Item 41, Page 41, Sheet 6?

A. The upper one-half of this sheet shows the arithmetical processes by which I have arrived at a ratio of 90.92 per cent for Freight, and 9.08 per cent for Passenger, as regards the switching and terminal service performed by the Bessemer & Lake Erie Railroad during this year. There is no allowance made in this calculation for any other element than that of assembling cars for movement as a solid train at the point of origin, and distributing cars at the terminal point in single units; that is, car for car; and, roughly speaking, this result corresponds in most cases closely with the average number of cars per train.

MR. SEVERANCE: I move to strike that answer out as hearsay and incompetent. Are you going to offer this page in evidence?

MR. CORNEAU: Yes.

MR. SEVERANCE: He states on the page here that it is an arbitrary thing.

MR. CORNEAU: Yes, I know he does.

By MR. CORNEAU:

Q. The other items on the page are taken, I suppose, directly from the report of the Railway Company to the Interstate Commerce Commission?

A. They are, and they involve a simple addition.

MR. SEVERANCE: That is indefinite. Which items do you mean are taken direct?

By MR. CORNEAU:

Q. Specify them, please.

A. Items 1 and 9, and 2-8 at the botton of the page.

Q. The item 41—where is that taken from?

A. Item 41 is taken from page 95 of the Bessemer & Lake Erie's report to the Interstate Commerce Commmission for the year ending June 30, 1911.

Q. In the case of the Duluth & Iron Range Railroad, and the Duluth, Missabe & Northern Railroad, did you make the distributions in the same way, and do your explanations on the Bessemer & Lake Erie tables explain fully the tables for the Duluth, Missabe & Northern and the Duluth & Iron Range Railroad?

A. Yes, they do.

Q. Will you turn, Mr. Muller, to your tables previously mentioned, which show the distribution of cost of freight operations, as between ore and other commodities? I think you will find that at page 93, for the Bessemer & Lake Erie Railroad.

A. Yes, page 93.

Q. The first item there is Total Operating Expenses, followed in parenthesis by "Page 65." That refers to what?

A. Page 65, again, refers to the carrier's report to the Interstate Commerce Commission.

Q. The next item is a deduction from that figure of the passenger service, operating expenses. Where did you get that figure that you deduct?

A. From page 39 in this book.

Q. In your book of exhibits that you have referred to?

A. Under "Analytical Summary."

Q. In other words, that is the Passenger Service Operating Expenses, as computed by you in the table marked "Exhibit No. 6" in the Youngstown case?

A. It is.

Q. Then comes a list of items which are deducted because not chargeable to ore traffic. Will you please explain why, in

your judgment, such items are not chargeable to the ore traffic, and how you arrived at them? Take your first item, Superintendence.

A. The first item, strictly, speaking, is Buildings, Fixtures and Grounds. It is necessary to explain that before you can explain the deduction for superintendence. Buildings, Fixtures and Grounds, under the classification, would seem to have no relation whatever to the ore traffic, and 9772/737272 of the $38,925.44 total charged to superintendence under the heading of Freight——

MR. SEVERANCE: Where did you get that $38,000?

THE WITNESS: That comes from page 37, the top item, under Distributed on Basis of Primary Accounts 2 to 17, inclusive. I will ask the stenographer to repeat my answer.

(The stenographer read as follows:)

"The first item, strictly speaking, is Buildings, Fixtures and Grounds. It is necessary to explain that before you can explain the deduction for superintendence. Buildings, Fixtures and Grounds, under the classification would seem to have no relation whatever to the ore traffic, and 9772/737272 of the $38,925.44 total charge to superintendence under the heading of Freight——"

THE WITNESS (Continuing): represents the portion of superintendence which must be borne by Buildings, Fixtures and Grounds excepted here.

By MR. CORNEAU:

Q. I think, perhaps, I have not understood where you say Buildings, Fixtures and grounds. What was it, "would be" or "which would be" or what was your statement?

MR. SEVERANCE: He says that item has no reference to the ore traffic.

By MR. CORNEAU:

Q. Will you explain just a little more fully what you mean by that?

A. The charges as to buildings, fixtures, and grounds, as they are classified in the official classifications of the Inter-

state Commerce Commmission, cover items which have absolutely no reference to ore traffic. There are no buildings required for storing ore. There are no special fixtures required outside of the items covered by ore docks and wharves. There are no special buildings required at either end, and there are no grounds required except those of the right of way, which are covered by other accounts.

Q. Which are not included in that item of "Buildings, fixtures, and grounds"?

A. Yes, Buildings, fixtures and grounds.

MR. SEVERANCE: May I ask him a question right here?

MR. CORNEAU: Certainly.

MR. SEVERANCE: Are round houses included in "buildings"?

A. There are round houses included in Buildings, where round houses are purely of a storage nature, and where no other services are performed, where they are not figured as engine houses in which minor repairs and so forth are made.

Q. I am not talking about that. I am talking about the regular round houses, where engines are stored. That is included in buildings, is it not?

A. That is rather ambiguous. There is an engine house, and there is also a round house, which is purely a storage house.

Q. What I mean is a round house, a building where an engine is run in when it comes out of service, and wiped, and from which it is put into service the next day. That is a building?

A. Yes.

Q. And that is included under that head?

A. Not necessarily.

Q. Do you know whether it is or not?

A. It depends entirely on the carrier.

Q. Then you do not know? So that you have taken this out without knowing whether it should come out or not? Is that right?

A. No. I cannot say that it is right.

Q. What do you know about it?

MR. CORNEAU: Perhaps we had better defer that.

MR. SEVERANCE: I thought he would tell us about it, frankly. It seems that he will not.

MR. CORNEAU: I think the witness has stated with entire frankness what the fact is.

MR. SEVERANCE: I think not.

MR. CORNEAU: I think I will note an objection to the statement of counsel that he supposed the witness would frankly state the fact; his obvious purpose being to imply that the witness has not been frank in his answers, which is objected to as improper conduct on the part of counsel, and calculated to intimidate the witness.

MR. SEVERANCE: Have you finished your speech?

MR. CORNEAU: I have.

MR. SEVERANCE: All right.

By MR. CORNEAU:

Q. I did not quite understand, Mr. Muller, that denominator, 737,272. What is that figure? That is in the item of superintendence, which we have just been talking about?

A. That is the total amount of maintenance of way and structures chargeable to freight service under the preceding allocation.

Q. Then you have explained the first two deductions under the heading of "Less Items, not Chargeable to Ore Traffic." Come now to the third, a deduction on account of maintenance of way and structures, and explain that, if you please.

MR. SEVERANCE: On what page is that?

MR. CORNEAU: Page 93.

MR. SEVERANCE: Which item is it you are asking him about?

MR. CORNEAU: The third item, the deduction.

MR. SEVERANCE: The total maintenance of way and structures?

MR. CORNEAU: Yes.

MR. SEVERANCE: 172,000?

MR. CORNEAU: Yes.

THE WITNESS: The total charge under the previous allocation of freight service for the general account was $737,-

272.39. That covers the 199.84 miles of line reported on and includes 46.71 miles of line shown on page 17 of the Bessemer & Lake Erie report to the Interstate Commerce Commission to be mileage of spur tracks used only for assembling coal for the subsequent movement over main lines, and therefore had no relation to the ore traffic.

By MR. CORNEAU:

Q. Now come to the next items deducted.

A. Those are items under General Account 3, and relate to the solicitation of traffic; which have no relation whatever to the ore traffic because the Bessemer & Lake Erie does not have to spend money, and does not, as a matter of fact, spend money, for the solicitation of its ore traffic.

MR. SEVERANCE: I move to strike out that answer as hearsay.

By MR. CORNEAU:

Q. You have assumed, in making those deductions, I take it, that the Bessemer & Lake Erie Railroad hauls ore altogether for the Steel Corporation. That is the assumption, is it not?

A. Yes, sir.

MR. CORNEAU: That fact already appears in evidence, Mr. Severance.

By MR. CORNEAU:

Q. Your answer just made applies to what items; all under Account 3?

A. All under Account 3, from 53 to 60.

Q. Take now the items under Account 4, and explain those, if you please.

A. The items under account 4, from 63 to 66—are simply station expenses and station employes. These have no application to ore traffic for this reason, that the employes who handle ore on the one end, as well as on the other, for distribution, are purely yard employes; they are not station employes, and the extremely slight expense of waybilling is perhaps the only expense that should be exempted from the ex-

emption, if I may say so; but it is absolutely impossible to arrive at any definite measurement to apply to it.

MR. SEVERANCE: I move to strike out the answer as pure hearsay, and incompetent.

By MR. CORNEAU:

Q. State whether or not, Mr. Muller, you are familiar with the way in which ore is handled.

A. I think I am.

Q. Do you know whether or not ore is stored in freight houses?

A. I have never seen it stored in a freight house.

Q. What is the usual method of handling the ore?

A. There are two methods followed. One is that of unloading it from the hold of the vessel direct to cars, or at least as nearly direct as it can be done. The other way is of storing it temporarily on a dock, either at the Lake shore, or at a dock somewhat inland from the Lake, and of moving it—reloading it—by a process of machinery, a shovel or a bucket, at some subsequent date.

Q. Do you happen to know whether or not there is a separate dock company at the terminus of the Bessemer & Lake Erie on Lake Erie, at Conneaut?

A. I do not know whether there is or not just at this present moment.

Q. With reference to the time for which these analyses were made up, do you know?

A. I could not say.

Q. With respect to any period, do you know?

MR. SEVERANCE: I object to that as entirely immaterial. If it does not cover the term for which the analyses were made, it is utterly immaterial.

MR. CORNEAU: We will get at it. Has he answered?

MR. SEVERANCE: Yes. He said he did not know. That is the reason that I made my objection.

MR. CORNEAU: I did not catch the answer. Let the stenographer read the answer.

(The stenographer read the answer of the witness as follows:)

"A. I could not say."

By Mr. Corneau:

Q. That is with reference to any period?

A. With reference to any period at Conneaut Harbor.

Q. Can you state whether or not at this time the annual reports of the Bessemer & Lake Erie Railroad show anything with respect to that?

Mr. Severance: That is objected to as incompetent, immaterial, and not the best evidence.

A. I cannot say that.

By Mr. Corneau:

Q. Do you think you could ascertain that fact between now and two o'clock?

A. I can, very easily.

Mr. Corneau: We will pass that item for the moment.

By Mr. Corneau:

Q. Take your next item for deduction. By the way, the deductions you have just referred to were deductions under Account 4.

A. Sub-accounts, 63, 66, and 94, all belonging to the same group.

Q. All right. Now, sub-account No. 99, under that account 4.

A. That is "Loss and damage—Freight."

Q. Why is that deduction made?

A. That is made for the reason that beyond the seepage from cars, which is ordinarily very slight, there is no such thing as a loss on ore unless by a wreck, which would drop the cars into a body of water deep enough to make the recovery impossible; and that, on the line of the Bessemer & Lake Erie, I do not think is at all possible.

Mr. Severance: I move to strike out the answer as wholly speculative, and not founded on anything that the witness knows anything about.

By Mr. Corneau:

Q. Now take up your Account No. 5, Total General Expenses, and explain that deduction?

A. This deduction, again, is for the proportion of mileage of spur tracks used only for assembling coal for movement subsequently over the main line, and the proportion of 46.71 to 199.84 of the general expenses assignable to freight, which was shown on page 37 to be $112,388.57, amounts to $26,269.36.

Q. Now, your item 53.29 per cent of total freight expenses, which you say is chargeable to ore traffic——

A. Yes.

Q. (Continuing) refers to page 97, line 21?

A. Yes, that is on the report of the Bessemer & Lake Erie Railroad Company to the Interstate Commerce Commission.

Q. Is that percentage shown there, or did you compute it?

A. That percentage is shown there.

Q. That percentage is shown?

A. Yes, sir.

Q. And represents what?

A. It is shown there in the last column, and represents the ratio which the total ore tonnage bore to the total tonnage in the freight department, of all kinds.

Mr. Severance: May I look at that report you are looking at?

The Witness: This is just a form (handing same to Mr. Severance). This is nothing but the blank form.

Mr. Severance: You have not got this filled out?

The Witness: No, sir.

Mr. Severance: I thought you had a copy of the annual report there.

The Witness: No, sir.

By Mr. Corneau:

Q. Then, in order to get the cost per ton, as I understand the table, you have divided the amounts arrived at by computing 53.29 per cent of the total operating expenses chargeable to the ore traffic, by the number of tons of ore shown to have been moved?

A. That is correct.

Q. You prepared similar tables, did you not, for the Duluth & Iron Range Company, and for the Duluth, Missabe & Northern Company?

A. I have.

Q. And they appear at pages 94 and 95 of the book of exhibits in the Youngstown case?

A. They do.

Q. Were they prepared in the same way?

A. Absolutely.

Q. And the explanations you have already made for the Bessemer & Lake Erie, would apply to them also, would they?

A. Yes, sir.

MR. CORNEAU: I think we might as well reserve the offer of those tables until I have examined him a little more, this afternoon, on that matter that he was going to find out about.

(Thereupon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

The hearing was resumed, pursuant to the taking of recess.

JEAN PAUL MULLER,

the witness under examination at the taking of recess, resumed the stand for further

DIRECT EXAMINATION

By MR. CORNEAU:

Q. Mr. Muller, some question arose this morning as to the propriety of the deduction of station expenses in computing the cost of ore. Will you tell us, in a general way, what investigation you have made with respect to the handling of ore, generally, and in particular, on the Bessemer & Lake Erie, with regard to the item of Station Expenses?

A. I made a rather detailed investigation of the handling of ore at Cleveland, Fairport and Lorain.

MR. SEVERANCE: I object to any statement by the witness as to any conditions at the three places he has named, as incompetent and immaterial, as the Bessemer & Lake Erie does not run to either of those points, and I move to strike out what the witness has already stated.

THE WITNESS: From a casual inspection of the conditions at Conneaut Harbor, in the early part of May of this year, I reached the conclusion that they did not differ there from the other three ports more specifically examined.

MR. SEVERANCE: The same motion as to the rest of this statement.

By MR. CORNEAU:

Q. Mr. Muller, I wish you would state whether or not, in your judgment, the bases of allocation to freight and passenger service of the various items of expense adopted by you are fair and proper bases.

A. They are.

Q. And will you state whether or not those same bases have been used by you generally, in investigating the cost of service and in analyzing accounts for the purpose of ascertaining the cost of service for particular items?

MR. SEVERANCE: I object to that as immaterial. The fact that he has done the same thing in another case would not make it any better, if it is in error.

MR. CORNEAU: In response to the objection, I should perhaps state that the only purpose of the question is to show, if that be the fact—I have not heard his answer yet—that these bases were not used for this particular case in order to get at the figures in some different way here from what was used in other cases.

By MR. CORNEAU:

Q. Now, please answer.

A. The basis is precisely the same as that used in all other cases, and no change has been made from that ries of bases originally adopted in the Pittsburgh Coal C mpany

case, which was the first that I introduced before the Interstate Commerce Commission.

Q. In other words, this is a uniform system which you have applied regularly in all your work of that kind?

A. It is.

MR. CORNEAU: We offer in evidence the tables which have been described by Mr. Muller, and which the reporter may copy from the book of exhibits in case No. 4608 before the Interstate Commerce Commission, at pages 36 to 53, inclusive, and 93, 94 and 95, giving them the appropriate exhibit numbers in the present case, and leaving on the exhibit numbers in the other case, because they have heretofore been referred to by those exhibit numbers, also making the number of pages constituting the exhibts in this case correspond to the number of pages which constituted the separate exhibits in the other case.

MR. SEVERANCE: I object to the said exhibits, and each of them, as incompetent, irrelevant and immaterial, confessedly arbitrary, and largely founded upon hearsay testimony.

(The tables referred to were thereupon marked Government Exhibit Muller No. 283, November 21, 1912, to Government Exhibit Muller No. 286, November 21, 1912, both inclusive, and Government Exihibits Muller Nos. 287, 288 and 289, November 21, 1912.)

MR. CORNEAU: We will check over Mr. Muller's testimony, and it is a mere matter of the order of proof. If there seem to be any items in the tables that are based upon incompetent information on his part, we may supply that proof later. Of course that is a mere matter of the order of proof.

CROSS EXAMINATION

By MR. SEVERANCE:

Q. Mr. Muller, have you been over the Bessemer & Lake Erie Railroad?

A. I have not been over it from Conneaut Harbor down to the terminus or the transfer points with the Union and so on. I have only crossed it. I have seen different parts of it. I have never ridden over it in any of its equipment.

Q. What is the southern terminus of the Bessemer & Lake Erie Road, as operated by it?

A. As I understand it, the southern terminus is near Pittsburgh proper, at a junction point with the Union Railroad.

Q. Yes. It is called North Bessemer, is it not?

A. North Bessemer, yes.

Q. At North Bessemer, this ore, which is the subject of your investigation, is turned over to the Union Railroad?

A. I so understand.

Q. The Union Railroad keeps its own accounts and makes its own returns to the Interstate Commerce Commission, does it not?

A. It does; of a different character, however——

Q. I understand. What I wanted to bring out is that the Union Railroad expenses and earnings are not disclosed in the report of the Bessemer & Lake Erie Road.

A. They are not.

Q. No. So that the costs that are reflected in your figures here, for the handling of ore, includes the cost of handling the ore from Conneaut Harbor to North Bessemer only?

A. Over the lines of this particular company only.

Q. That is what I mean. I am speaking of the Bessemer & Lake Erie Road.

A. Pardon me. I suppose I should not try to correct your question.

Q. That is all right. I want it definite. I will ask it again, so that there will be no question.

As to the Bessemer & Lake Erie, the annual report showing costs and expenses, embraces the cost of operating that road from Conneaut Harbor to North Bessemer only?

A. That is all. That I understand.

Q. And at that point of North Bessemer, a few miles north of East Pittsburgh, the ore traffic is interchanged with the Union Railroad?

A. Yes, sir. That is correct.

Q. And the costs that you have figured on are the costs of handling the ore between those two points only?

A. Precisely.

Q. That is, between Conneaut Harbor and North Bessemer?

A. Yes, sir.

Q. At North Bessemer the ore is turned over to the Union Railroad, and is classified by it in its yards and delivered to the furnaces, is it not?

A. That is what I understand.

Q. And the expense of such handling, from North Bessemer to the furnaces, is borne by the Union Railroad and paid for to the Union Railroad?

A. It has revenues arising from it, and expenses incident to it.

Q. It pays that expense?

A. Yes.

Q. The furnaces that are reached over the Union Railroad from North Bessemer are several miles away, are they not?

A. Yes. I could not estimate it.

Q. You have been over the Union Railroad?

A. I have been over the property of the Union Railroad several times.

Q. You know they have extensive yards for classification, storage, and all that sort of thing; and their haul to the various furnaces from North Bessemer is anywhere from seven to eight or ten or fifteen miles, is it not?

A. Yes; I think the total main line mileage is 31 miles; but no single haul is that long.

Q. There are different hauls to different furnaces?

A. Yes.

Q. The Bessemer & Lake Erie itself does not reach any of these furnaces, but only reaches to North Bessemer?

A. I am not aware that it does reach any single one.

Q. Then may I ask you why you head what is termed Exhibit 40, on page 93 of the book, "Cost of Distributing Ore from Conneaut Harbor, Ohio, to Blast Furnaces of the United States Steel Corporation, via Bessemer & Lake Erie Railroad Company, in so far as the same is ascertainable by analysis of this carrier's annual report to the Interstate Commerce Commission for the year ended June 30, 1911." That is incorrect, isn't it? The Bessemer & Lake Erie does not de-

liver to the furnaces of the United States Steel Corporation, as you have stated in your heading, does it?

A. I think the heading itself carries the qualification.

Q. What is the qualification carried by the heading?

A. "In so far as the same is ascertainable by the analysis of this carrier's annual report."

Q. Did you head that "Cost of Distributing Ore From Conneaut Harbor, Ohio, to Blast Furnaces of the United States Steel Corporation"?

A. Precisely.

Q. Does this cost you have analyzed include the cost of handling it from Conneaut Harbor to the furnaces, or only part of the way to the furnaces?

A. In so far as it concerns the Bessemer & Lake Erie.

Q. You do not say that.

MR. CORNEAU: Yes, he does.

MR. SEVERANCE: No; it says "in so far as the same is ascertainable by analysis of this carrier's statement."

By MR. SEVERANCE:

Q. If your heading indicates, as it does to me, that you meant to say that this cost of twenty-eight and about a quarter cents per ton covers the cost of handling ore from Conneaut Harbor to the furnaces of the Steel Corporation, you do not wish to be so understood, do you?

A. Not to the furnace yards, no.

Q. You mean it only to North Bessemer, do you not?

A. That is absolutely the way I have, in my opinion, qualified it in the heading.

Q. You have not said anything about North Bessemer here. You have said "from Conneaut Harbor to the furnaces." Now, the Bessemer & Lake Erie, you have already stated, does not go to the furnaces, but only goes to North Bessemer. You do not wish your testimony to be understood as meaning that the cost that you have shown here is anything more than the cost of handling it from Conneaut Harbor to North Bessemer, do you?

A. Not at all. There is no misunderstanding about that.

Q. You were employed as an expert witness by the Pittsburgh Steel Company, were you not?

A. No, sir.

Q. By what companies were you employed? The Youngstown Sheet & Tube Copmany?

A. I have been employed for the Youngstown Sheet & Tube Company; yes, sir.

Q. They employed you as an expert witness, did they not?

A. As an expert accountant, yes.

Q. Well, as a witness. It was understood that you were to testify, when you were employed?

A. Yes, I suppose so. Not specifically.

Q. And you did testify?

A. For the Youngstown Sheet & Tube Company, I did; yes, sir.

Q. In that case did you not give this testimony before the Interstate Commerce Commission:

"Exhibit 40 shows the cost of distributing ore from Conneaut Harbor to all the furnaces located on the Bessemer & Lake Erie, or on terminal lines connected with the Bessemer & Lake Erie."

Did you not say that was what you meant by that?

A. Yes, sir.

Q. You do not mean that, do you?

A. I think the line of questions leading up to that particular question would justify the answer I made there.

Q. You do not mean to now testify to that, do you—that that twenty-eight and a fraction cents is the cost of distributing ore from Conneaut Harbor to all the furnaces located on the Bessemer & Lake Erie, or on terminal lines connected with the Bessemer & Lake Erie? You do not mean to so state now, do you?

A. No——

Q. I read your testimony, and I have copied this from your testimony. Have you taken pains to explain to the Commission that you did not mean that?

MR. CORNEAU: I object to that question as wholly irrelevant and immaterial, and not cross examination.

MR. SEVERANCE: I am testing the credibility of his testimony.

THE WITNESS: I think the line of questions which led up to this particular answer that you read carries with it the necessary inference.

MR. SEVERANCE: You are quite mistaken, I may say, for your information. It does not show anything of the kind.

MR. CORNEAU: I object to that statement by counsel. I ask that counsel be good enough to show to the witness the full transcript of his testimony at that time, instead of picking out isolated statements, and then stating to the witness that he is mistaken about his remembrance of the circumstances of his testimony.

By MR. SEVERANCE:

Q. I will ask you whether you have taken pains to state to the Interstate Commerce Commission that the figures you gave did not include the entire cost of distributing ore from Conneaut Harbor to all the points located on the Bessemer and Lake Erie, or on terminal lines connected therewith?

MR. CORNEAU: That question is objected to as incompetent, irrelevant and immaterial.

By MR. SEVERANCE:

Q. Answer, whether you have or have not?

A. I think I did sufficiently state, though perhaps not in so many words, by the submission of other exhibits in great detail, which show that all other routes are treated in three sections, as this is treated simply in its main phase, as the heading plainly states.

Q. That is to say, you think they could figure out a qualification of the direct statement made on your exhibit and in your testimony? Is that it?

A. I do not say they could figure it out, but I know, as a matter of fact, that the records of the Interstate Commerce Commission are so full of this information that there is not a single Commissioner today who did not understand, without this specific qualification, just what the exhibit meant.

Q. You heard the testimony of Mr. Kennedy, traffic man-

ager of the Pittsburgh Steel Company, in that case, did you not?

A. I do not think I did.

Q. Were you not there?

A. I do not think I did hear it.

Q. When you were employed to testify for the Youngstown Company, you knew that they were seeking to get as low a rate imposed upon the traffic in iron ore as they could, did you not?

A. In a general way, yes.

Q. That was the purpose of employing you as an expert—to try to get the rate reduced?

A. No.

Q. It was not?

A. I cannot say what their purpose was, but their specific contract with me called for an analysis of the specific movements here stated.

Q. And the costs?

A. And the costs involved; upon the same basis, identically, as they knew beforehand I was employing. What purpose they wanted to use it for I did not consider.

Q. Did you think they were trying to raise the rate?

A. As a general proposition, that has nothing whatever to do with my work.

Q. You did not think they were trying to raise the rate?

A. They might have. I have been engaged, on more than one occasion, and am now negotiating with people who are trying to raise rates, to do precisely the same work for that purpose.

Q. What do you say, as an expert, as to the comparative cost of handling coal northbound over the Bessemer & Lake Erie, and ore southbound?

A. Speaking only, of course, of the main line haul?

Q. Yes.

A. And leaving out of consideration the empty return haul in both directions? You are trying to get me to express an opinion purely upon unit by unit, or car by car?

Q. Unit by unit, yes.

A. I should say that the hauling of coal is slightly more expensive.

Q. How much more?

A. I should not venture an estimate of that in a percentage form without making some comparison of the actual figures which I have in my office.

Q. Why do you think it is any more expensive?

A. For the one reason that coal does not load as heavily; not quite.

Q. How much does it lack?

A. It is a very slight difference.

Q. Very slight indeed, is it not?

A. Very slight, yes.

Q. On the coal northbound there is almost invariably a return loaded haul, is there not?

A. Yes; or there is a return haul the other way. I do not know which is the original haul and which is the return haul.

Q. There is more southbound movement than northbound?

A. On the Bessemer & Lake Erie?

Q. Yes.

A. I should think that is true, even without personal observation.

Q. You know very well that the ore hauled southbound is very much greater than the northbound tonnage, car by car?

A. I know that from the reports of the carrier.

Q. Yes. So that, in handling ore, you have to include a greater percentage of empties on the return haul than you do in hauling coal northbound, where the cars can be loaded southbound with ore?

A. Certainly for part of the way.

Q. So that, as a matter of fact, the northbound coal movement is almost entirely carried in cars which can be loaded back, and are loaded back with ore? Is that true?

A. I think that can safely be assumed to be true; yes, sir.

Q. The greater the percentage of empties returned, the higher the cost of transportation, if you take into account both the loaded and the empty movement?

A. That is true.

Q. Taking into account the fact that the excessive return

movement of empties is the movement of empties northbound in connection with the ore traffic, would you not say that the coal traffic is handled more economically than the ore traffic on the Bessemer & Lake Erie?

A. If, as I said before, you consider the return haul feature.

Q. That is what I am speaking about.

A. Then perhaps your statement is accurate.

Q. That would be your judgment, would it not?

A. Yes. Remember, I qualified my answer at the time.

Q. I understood that. I know that.

Now, take the item of cement. That is quite a large traffic, you know, over the Bessemer & Lake Erie, northbound?

A. Northbound, yes.

Q. That loads as heavily as ore?

A. That is one of the heavy loading commodities. I do not know that it loads quite as heavy as ore.

Q. Well, you know that it is a very heavy loading commodity?

A. Yes; I know it is a very heavy loading commodity.

Q. And the same answer that you gave as to coal, taking into account the return movement of empties, would apply to cement?

A. Not if it originated in the Pittsburg district; it would not apply in the same way to cement as to coal.

Q. Why not? I am speaking of costs of operation, not revenue. I am speaking of northbound cement.

A. Of course, if there was no return haul, strictly, on it, you would have to charge the entire empty return to that particular movement.

Q. But you do not catch my point. Do you know where Universal is located on the Union Railroad,—just below North Bessemer?

A. Yes; it is within the city of North Bessemer, really.

MR. CORNEAU: Your question assumes, Mr. Severance that all this cement moves to Conneaut, and that the cars are filled with ore at Conneaut, on the return movement, does it not? At least that is the point that I gather that Mr. Muller is making.

MR. SEVERANCE: I do not assume anything of the kind.

MR. CORNEAU: I think that inference is justified from your question.

By MR. SEVERANCE:

Q. Would you not say that cement, speaking from your information obtained as an expert for the Interstate Commerce Commission, loads as heavily as iron ore?

A. Yes; at least there would be very little difference.

Q. Does it not load fully as heavy as iron ore?

A. According to my recollection of the Interstate Commerce Records, which I had the pleasure of handling for some years, ore is the heaviest loading commodity, car by car, of all commodities; but there are others, such as cement and coal, that come very close to the average loading of ore, although none of them as heavy as ore.

Q. You would say substantially the same?

A. I would say substantially the same to all intents and purposes; very nearly the same.

Q. Iron and steel manufactured products load very heavily too, do they not, in carload lots?

A. If you refer to the carload rating, the minimum carload—

Q. I mean things like rails and billets and plates?

A. Yes, solid products.

Q. They load very heavily?

A. Of course there are a large number of products, as you know, that are solid products and do not load heavily.

Q. They might go less than carload, but I mean the heavy products such as steel rails and billets.

A. And ingots, and the like.

Q. They load as heavily as iron ore, do they not?

A. I think very nearly so. There is a difference.

Q. But not a substantial difference?

A. Well, it is substantial in the products.

Q. In the particular products I mention?

A. Even in those heavy products.

Q. Well, what percentage?

A. It is pretty difficult to give any percentage, except in a general way.

Q. Would you be surprised to learn that the average loading of iron and steel products northbound over the Bessemer Railroad is greater than the average loading of ore southbound?

A. I certainly would be.

Q. Well, we will have to prove it by somebody else, then, and give you a surprise.

I notice in a foot note at the bottom of Exhibit No. 40, that you say, with reference to the cost of handling ore, that this cost covers not only loaded movement south, but includes also the cost of 56 per cent empty return car movement. Where did you get that 56 per cent?

A. It is in the report of the Bessemer & Lake Erie Railroad, page 93.

Q. Have you a copy?

A. No; I simply have the form, items 34 and 35, 34 reading, "average number of loaded cars per train mile", and item 35 reading, "average number of empty cars per train mile", and the percentage relation of those two items, the percentage relation of the empty to the loaded would be 56 per cent. That is the average over the entire system of all traffic, of all kinds.

Q. Do you not know, as a matter of fact, that the return movement of empty ore cars is very much higher than any other return movement there is on the Bessemer Road? Is it not practically the whole empty movement—the return of empty ore cars?

A. Yes; that might be true.

Q. Then your note is wrong in that regard, is it not—in only including 56 per cent of the return movement of empties?

A. If the return movement of empties is greater than that for the average of all business, then of course the figures are subject to that qualification.

Q. You have just stated that you think it is.

MR. CORNEAU: No, he said it might be true.

A. They might be.

By Mr. Severance:

Q. Do you not think it is true from your investigation of their traffic and the extent of the ore traffic southbound?

A. Well, I say there is an empty return haul. I could not begin to estimate how much that in car miles, in the volume of car miles, amounts to, as compared to the total volume of empty car miles.

Q. Then, as a matter of fact, you do not know anything about it whatever, as to whether 56 per cent, or 60 per cent, or 75 per cent, or 80 per cent. of return movement of ore cars would be the correct percentage to take; you have no knowledge as to that?

A. I have never claimed to have any knowledge on that point.

Q. You do not claim it now?

A. No.

Q. If there was a larger return movement than 56 per cent, the cost of handling the ore would be a greater amount per ton than you have shown, would it not?

A. Undoubtedly. There is no question about that.

Q. Do you know anything about the topography of the country between North Bessemer and Conneaut?

A. No; I have never taken any pains to go over the line, as I have said before.

Q. Have you been over the line?

A. I have never been over the line, no.

Q. You have never investigated the topography to ascertain the gradations of the track, or the divides that are crossed?

A. No, I never contract to do anything of that sort. That is engineering work, in my opinion.

Q. In computing your costs, did you take into account any locomotive pushers?

A. On the specific service here?

Q. Yes.

A. No.

Q. You did not take that into account?

A. It is all covered in the original volume of the operating expenses.

Q. I quite understand that—

A. (Continuing) And the pusher service works one way as well as the other. If there are grades on the one side to go up, there are grades on the other side, more or less; a hill always has two sides, and the return haul will have to have the same pusher service. So, if I have charged—

Q. You have answered the question.

MR. CORNEAU: Let him finish his answer.

A. (Continuing) If I have charged 53.29 per cent. of this total expense, amounting to $3,750,246.70, that includes all the expense of any kind that from the standpoint of analyzing the figures downward can be charged to this ore traffic.

MR. SEVERANCE: I move to strike out that statement, as not responsive to any question, and purely voluntary and argumentative.

By MR. SEVERANCE:

Q. In your Exhibit No. 40 you have cut out absolutely certain items, amounting to $447,092.83 subtracting those from the total operating expenses after having allocated $641,981.73 to passenger service. That is correct, is it not?

A. That is correct.

Q. You have done that upon the theory that those items constituting $447,092.83 have no reference to the ore business?

A. With the slight exception that I have put on the record, of an insignificant portion—insignificant in my opinion—which is impossible to estimate from the performance records on file with the Interstate Commerce Commission.

Q. Where did you get that figure 53.29 per cent?

A. On page 97, line 21, of the Interstate Commerce Commission report.

Q. What is that? Does that mean that that constitutes the percentage of the total traffic of the company?

A. Of the volume of traffic handled by the company.

Q. That is, taking the entire volume of traffic handled as 100 per cent, 53.29 per cent of that total tonnage is ore?

A. Yes.

Q. That is correct, is it?

A. The traffic handled, irrespective of distance.

Q. Well, you have reduced it, I suppose, to business handled one mile.

A. It can not be done with the figures in the Interstate Commerce Commission report.

Q. Then that is irrespective of distance, and will you explain to me how you can get at an accurate percentage if you do not reduce it to a haul for one mile?

A. You can not, as a matter of fact, with the figures in the Interstate Commerce Commission report; but the figure here, 53.29 per cent, seemed to me absolutely fair to the Bessemer & Lake Erie Railroad, because it could not very well be disputed that the ore moves a longer distance per ton than any other traffic on this line, or at least it moves as long a distance as any other traffic, ton for ton. That would necessarily make this percentage fair to the railroad.

Q. Does it move as long as some of the coal?

A. Coal can not move any longer on the Bessemer & Lake Erie, because that moves the longest distance, the ore moves the longest distance.

Q. Is that the longest distance? Suppose coal is delivered, as it is, in quantities, I believe, to the Lake Shore Road at Erie, Pennsylvania, northbound; that haul is longer than ore hauled from Conneaut to North Bessemer, is it not?

A. But the ore originates farther up on the line.

Q. Is not the haul from the point of origin to Erie longer than the haul from Conneaut to North Bessemer on ore?

MR. CORNEAU: You are talking about the point of origin, and not the point of receipt by the Bessemer & Lake Erie.

MR. SEVERANCE: The point of origin on the Bessemer & Lake Erie, or its branches.

THE WITNESS: I know of no haul that is longer than the haul on the ore, ton for ton.

By MR. SEVERANCE:

Q. Suppose that coal comes from those mines on the Union Railroad, or from the Union Railroad at North Bessemer, and is taken from that point to Erie, Pennsylvania. That is

a longer haul than the ore haul, southbound, from Conneaut to North Bessemer, is it not?

A. Slightly longer, but the——

Q. Will you kindly answer the question and then stop?

A. I wanted to qualify it.

Q. It needs no qualification. You answered it and then you proposed to make a speech in addition. Now you continually are doing that, and I object to that.

MR. CORNEAU: I object to counsel's comment that the witness is continually making speeches. The witness has a right to qualify his answer, and I advise him that he has an entire right to explain any answer he makes, as fully as he deems it necessary.

By MR. CORNEAU:

Q. Had you finished your answer?

A. I was going to say, but it would not affect the 53.29 percentage, because the ore traffic moves over the entire, or practically the entire line, in its total volume, while any such movement as cited by Mr. Severance would necessarily be relatively smaller, and the percentage would not necessarily be disturbed, and if it were disturbed, would, if anything, operate against the railroad's figures in the long run.

By MR. SEVERANCE:

Q. Have you finished your argument?

MR. CORNEAU: I object to that, and note an exception.

A. I have finished my qualification.

By MR. SEVERANCE:

Q. I will put another question, then. It would not affect the cost at all, then?

MR. CORNEAU: He has just said that it would.

MR. SEVERANCE: I am not asking you, but asking this gentleman who is a witness, I believe, and I object to the counsel posting the witness as to what answer he shall make, either directly or indirectly.

(Upon request the stenographer repeated the question, as follows:)

"Q. It would not affect the cost at all, then?"

A. Certainly, any change in the basic figures will affect the cost.

By Mr. Severance:

Q. Then, as I understand your testimony now, in one sentence you say this: That the percentage you have stated would not be affected by the additional distance to Erie, which you have testified to, and in the next sentence you say it would affect the cost. Am I correct in so understanding you?

A. As to the first part, that the percentage would not be affected, the percentage stays exactly as it is, 53.29; if you mean that were this tonnage reduced to ton miles, whether the percentage here shown of 53.29 would be changed by the longer haul on coal, then I say yes, it would.

By Mr. Severance:

Q. The 53.29 per cent. is the percentage of the total tonnage moved, without regard to distance, as I understand?

A. That is what it is.

Q. Therefore, if you increased the distance which the 46.71 per cent. is moved, you would not get an accurate result, if you divided on a straight percentage basis, would you?

A. If the distance that the 46.71 per cent. were moved were greater than the ore movement, then you would not, no.

Q. Do you entirely eliminate buildings, fixtures and grounds from consideration?

A. Yes, sir.

Q. I suppose it will be understood, will it not, that every item that is omitted from consideration here reduces to that extent the cost of handling the ore, or would reduce the tonnage cost as shown by you?

A. Yes; of course this is a very small item.

Q. I understand, but to whatever extent it operates?

A. To whatever extent it operates.

Q. And if these items of $447,092.83, which you cut out, should be left in, it would increase this 28.2484 cents?

A. Yes.

Q. Take this item of buildings, fixtures and grounds.

What do buildings include? What class of structures as applied to this item?

A. All manner of structures. It simply includes the maintenance, of course, and the painting and general repair on the outside, repainting, roofing and replacing—

Q. What kind of buildings, I mean?

A. All kinds of buildings, all buildings possessed by the Company, used in the transportation end.

Q. Then, as I understand it, you entirely eliminate from consideration the maintenance of any buildings, fixtures and grounds?

A. I have done so, yes.

MR. CORNEAU: Pardon me. His last answer was, "used in transportation expenses." That is an item under the subdivision of the account Transportation Expenses.

THE WITNESS: No, I beg your pardon. This means in the transportation of ore, and not any outside operation like docks and wharves and things of that sort. That is my qualification.

By MR. SEVERANCE:

Q. To be more specific, does it include station houses?

A. Yes.

Q. Does it include round houses?

A. Yes.

Q. Does it include every kind of building that is owned by the company and used in carrying on its transportation business?

A. In carrying on its transportation business, yes.

Q. Are the train despatchers at work in some of these buildings? They do not work out doors, do they?

A. No. That is true.

Q. They work in buildings?

A. As a general proposition.

Q. And the men that make out waybills work in buildings?

A. Usually.

Q. The men that keep the accounts of shipments and keep the accounts of loss and damage; the men that keep the gen-

eral accounts applying to ore as well as everything else, work in buildings?

A. Yes.

Q. And those buildings are in this lot concerning which you have eliminated the cost of maintenance, are they not?

A. Yes, so far as maintenance applies.

Q. So far as maintenance applies, and still you cut that all out as to a traffic which you say amounts to 53.29 per cent. of the entire tonnage of the road?

A. Yes.

Q. You cut that all out?

A. Yes.

Q. The trains that carry this ore are moved in obedience to instructions from these train despatchers, are they not?

A. Yes.

Q. The waybills of this ore and the bills of lading are made out in these buildings by clerks of the Bessemer & Lake Erie Railroad Company, are they not?

A. The waybills, yes.

Q. Not the bills of lading?

A. I do not think there are any bills of lading issued on that ore.

Q. You do not think there are?

A. That has been my information from past investigations.

Q. The engines that haul these ore trains are stalled in these round houses?

A. Yes.

Q. Do you think that is a fair thing, to leave them all out?

A. I have made that calculation——

Q. Do you think that is a fair thing to do. I will put that question to you flat.

A. It is, for the simple reason that there is no basis furnished for any allocation.

Q. Oh, there is no basis furnished for any allocation.

A. That is a qualification I made in the beginning.

Q. Then do you think that you should diminish the cost of hauling ore for the purposes of this statement in every case

where you are unable to allocate it; that you should charge it all against something else and make this cheaper?

A. Because these items are, in my opinion, extremely small.

Q. Irrespective of that, is it the theory upon which you have made up Exhibit No. 40, that in all cases where you are unable to allocate it you should apply it in such manner as to reduce the cost of hauling ore?

A. Yes, and qualify my figures correspondingly. I have consistently done that in every exhibit I have presented.

Q. This deduction of $447,092.83 means about six cents a ton on the tonnage of iron ore transported, does it not?

A. Yes.

Q. I notice that the item of advertising, $4,000, is one of the items that you have eliminated?

A. Yes, sir.

Q. I notice on page 36 that advertising is an item which you have allocated as between passenger and freight?

A. Yes, sir.

Q. In the proportion of about sixteen times as much to freight as to passenger. That is right, is it not?

A. Yes.

Q. Did you ever hear of the Bessemer & Lake Erie Railroad spending any money advertising so far as freight business is concerned?

A. Not on ore business.

Q. On any freight business of any description?

A. Nor do I know what the Bessemer & Lake Erie Reports on the advertising are. I would have to know that first.

Q. Then you do not know anything about it. That was allocated by you to passenger and freight arbitrarily without any knowledge on the subject as to how it should be divided, was it not?

A. Not any further than my system has been the same. I have uniformly applied it to other roads. It is the same for the Bessemer as for the Chicago & Northwestern. That is all I can say.

Q. That is to say, you have figured out what is to you a satisfactory system, and irrespective of the local conditions of the different roads, you go on and make up your statistics

and your divisions and everything else in one case the same as another.

A. Of course, I do.

Q. Yes, precisely. As an illustration of the beauties of that method, are you aware that about 97 per cent of the traffic of the Bessemer and Lake Erie Railroad is low class raw materials like ore, coal, cement, limestone and that sort of thing?

A. In a general way, I would not dispute that statement.

Q. That would be about right. Take this question of advertising, would you think that in the case of a road of that character, you should divide the expense of advertising in the same percentage as between freight and passenger, or in the same manner, as between freight and passenger, as in the case of the Chicago & Northwestern, which has vast quantities of high-grade freight, which runs fast freight lines, and does an enormous passenger business; do you think you should divide it in the same way?

A. Absolutely, because it is an expense of a speculative character, as I have explained in my general basis.

Q. Leaving out of the question any theories as an expert and looking at it as a common sense proposition, do you not know, merely as a matter of common sense, that the same proportion of that expense would not apply in one case as in the other, in view of the different characters of the traffic and of the roads?

A. As a matter of common sense, I know you cannot spend money unless you have it, and you have to take it from that source that is able to supply it, and if you will refer back to my answer as to the basis, you will see why I divide advertising that way, and I cannot change my statement then made to fit any specific condition.

Q. That is, you can not change your system, no matter what the specific conditions may be, on one road or another? Your system has to remain, like the laws of the Medes and Persians, unchangeable? That is right, is it?

A. If it is to have any value at all.

Q. If it is to have any value at all?

A. Yes.

Q. Irrespective of whether, as a common sense proposition, you know that in any specific case it must be wrong, nevertheless it must stand; otherwise it all goes to pieces?

A. The changes on my basis are always subject to the judgment of the Interstate Commerce Commission, after ascertaining specific conditions, by witnesses who testify to that extent; but my system is the same all the way through, and is only subject to such change as the Commission heretofore has seen necessary to make in each specific instance.

Q. I see. Then we come back to this proposition, that you have simply given us the benefit of certain distributions, according to an arbitrary system which you have adopted. That system must then be supplemented by testimony as to each particular company or line of railroad to which it is to be applied, and it will be modified as to such particular line as the particular circumstances in one case or another may determine to be just?

A. If they are different from what I might call an average operating carrier.

Q. But do you know whether it is an average—

A. My system is based upon experience with average carriers.

Q. Do you not know that the Bessemer & Lake Erie and the Duluth & Iron Range and the Duluth, Missabe & Northern are very, very far from the average, in the character of traffic they handle?

A. Oh, I do not hesitate to admit that.

Q. You know that?

A. Yes.

Q. And therefore, in order to apply your system to those three roads, it would be necessary to take specific testimony as to the conditions and the character of the business on those roads, and make certain modifications, would it not?

A. Certain modifications yes; it might be.

Q. I notice in this list of items that you say are not chargeable to ore traffic, a very large item of station employees—$120,815.86. You know, do you not, from your examination of the Bessemer Road, even the statistics, or the reading you

have done—you say you have not been over it—that it is largely a freight road. You know that?

A. Yes.

Q. Almost entirely. The passenger business is very trifling?

A. Very small; I would say yes.

Q. The station employees are employed in looking after freight, then, almost exclusively?

A. Freight, yes.

Q. Do you know how many clerks it takes to make the waybills alone of the ore shipments for these millions of tons of ore?

A. No, but it cannot take overly much, if it is handled as I understand it is, and believe it is, in the same way that it is handled by the other lines at the lake ends.

Q. I ask if you know.

A. I do not know specifically with reference to the Bessemer & Lake Erie.

Q. You do not know how many men they have to employ to keep the records of all of these shipments?

A. No.

Q. Or to keep the time and the accounts of all the trainmen engaged in handling this work?

A. No, sir.

Q. Or any of the other multitude of things that have to be done in connection with ore shipments? You do not know what proportion of that $120,000 is, as a matter of fact, expended in connection with the handling of ore?

A. No, I do not know, as I have stated.

Q. Not knowing it, therefore, you strike it all out, and do not charge any to ore?

A. Precisely; with the qualification I have put in the record a number of times.

Q. And thereby reduce your cost to whatever extent that may be—your cost per ton?

A. To whatever extent the amount included in these four items—sixteen, sixty-three, sixty-six and ninety-four—is chargeable to ore tonnage. As I have stated before, I have

no measurement, and I qualified my original statement to that extent.

Q. Why did you not put it all in? Why did you not leave it all in, if you could not tell whether it should come out or not?

A. It is a matter of judgment. I could not do it both ways. I had to do it one way, and I chose this way.

Q. You chose the way that would best serve the persons for whom you were making up the statistics, in your opinion, did you not—reducing the cost?

A. No. If you want to know my reason for it, I will give it to you.

Q. I would like to have it, yes.

A. My reason for it was that I considered the allocation so far made so distinctly favorable to the carrier that I could afford to set these three or four items—at least the margin involved in them—against the carrier. To show what my belief was based on, I must revert again to the discussion of a few moments ago about the ton-mile unit involved in the final assignment of the total. The total volume of ore, as compared with the total volume of all freight, is 53.29. The ore, which is 53.29, moves say, 104 miles altogether. You have an empty return haul of 56 per cent. on all freight traffic, which would indicate that the balance of the traffic handled, 46 per cent, could not possibly have as great a distance as the 53 per cent. ore. That is the process by which I reached the conclusion that I had allocated, in using 53.29 per cent, or would allocate certainly an inside figure, rather than an outside figure; and these being two items that must be taken into consideration as modifying the final figure of 28.2484 cents per ton, of course I could not go any further than apply my own judgment as to how far one offset the other. I do not know, as a matter of fact, to this day, how far one might offset the other. I am perfectly willing to leave it to testimony as to the specific point, the same as I have always done before the Interstate Commerce Commission, as to how far one offsets the other.

Q. Then you do not wish to be understood as saying that

you have any knowledge as to whether 28.2484 cents is a correct sum or not?

A. No. I simply have submitted that to the Interstate Commerce Commission, and again submit it here, if you please, as the result of a certain series of calculations.

Q. Computations?

A. Computations; which show this 28.2484 cents. As to how far that really is the cost, or, first, whether the cost is actually ascertainable with mathematical precision; and second, how far this tallies with it, I would not undertake to say.

Q. Just a word on this question of dividing expenses between passenger and freight. That is something which has never been successfully accomplished, has it, to the entire satisfaction of either the Interstate Commerce Commission or traffic men themselves—unless you have done it now?

A. Individuals may think they have solved it to their own satisfaction, but there is no one method today, I presume that is what you have in mind?

Q. Yes.

A. (Continuing) There is no one method today which has the approval, say, of the Supreme Court of the United States, which has the last word on the subject, and which would be law to everybody concerned.

Q. Nor is there any one method today that is generally recognized by traffic men as satisfactory, is there? Is it not a common expression that that must be more or less arbitrary?

A. There is no question about that, as to it always having to be more or less arbitrary.

Q. Turning, for a moment, to Exhibits 41 and 42. Take Exhibit No. 41, the Iron Range. I see that you have made these same eliminations there.

A. Yes.

Q. You have eliminated telegraph and telephone operations?

A. That is included in the items I mentioned, that are subject to that qualification.

Q. Do you not know that on the Iron Range and the Missabe Roads a large part of that expense is necessarily incur-

red in connection with the movement of ore? Eighty per cent of the traffic is ore.

A. That would not, from the analytical standpoint, be conclusive to me.

Q. Take it from the common sense standpoint. Leave out any question of being an expert, and looking at it as a plain citizen, would you not assume, if 80 per cent of the tonnage was iron ore, the telegraph and telephone expenses must at least, in part, be applicable to that 80 per cent?

A. No. I do not see there is any such connection.

Q. You would not think that?

A. There is no such connection.

Q. Then you think that is properly taken out and charged entirely against 20 per cent of other traffic, do you?

A. With the qualification I always make.

Q. That you do not know anything about it?

A. That I have no direct basis for allocating it.

Q. If you have no direct basis, and know nothing about it, why should you pick out the 80 per cent and relieve it entirely, and put all that on the 20 per cent? If you know nothing about it, don't you think that seems rather strange to you?

A. I know this much, that telegraph and telephone operation, as classified in the official classification, would not seem to be applicable to ore traffic, as I know from personal observation it is being handled. I can not say specifically as to the Duluth & Iron Range.

Q. Have you been on the Duluth & Iron Range?

A. I have been up at the head of the lake, and have seen —

Q. Have you been to Two Harbors?

A. I have been at Two Harbors; yes, sir.

Q. Have you been over the line from there up?

A. I have not been any great distance up, no.

Q. Have you been over the Missabe?

A. I was more interested in the loading machinery at the time, and paid very little attention, and had no time to give any attention to the line movement proper.

Q. These telegraph and telephone expenses include the expenditures in connection with train despatching, do they not?

A. I do not think that is covered.

Q. Tell me if it is not.

A. Despatching trains, as I understand, is under a separate heading. I think this is intended to cover the inter-communication between stations. This is the text of it: (Reading)

"This account includes pay of telegraph operators and messengers in telegraph and relay offices, other than those employed in despatching trains and those located at stations who also perform other station work."

Q. What does that last mean? I did not catch it.

A. (Reading) "And those located at stations who also perform other station work."

Q. Does it mean it does not include them? Does it mean that the term does not or does include them? Which way am I to understand it?

A. Other than those employed in despatching trains and those located at stations. It does not include those.

Q. It does not include those?

A. No.

Q. Which one is this under?

A. It is under 4 on page 77 of the classification.

Q. Which number?

A. It is 94 of the account.

Q. What class of work does that include, then? You have shown what it does not include. Now, what does it include?

A. I do not think that I would care to answer that, without going back to the accountancy circulars which were issued four years ago, and which are very specific on most of these subjects.

Q. You do not know, then, what it is?

A. I would not care to state. The official classification is sufficient for my guidance.

Q. (Reading) "Station employees." You have left that all out here, as you did in the other case?

A. Yes.

Q. Do you know of any good reason for leaving that all out, as to 80 per cent of the traffic of the road?

A. Yes, I do not know of anything a station employee has to do with the movement of ore.

Q. You do not?

A. The people that start the ore are yard employees, and the people that receive the ore are yard employees; unless a mistake has been made by the carrier in interpreting the classification. I can not see how any great volume of charges to station employees can be attributable to ore tonnage.

Q. Do they not keep any accounts and make out any waybills, or do anything of that kind? Do you think the trains run hit or miss up there?

A. A great many of them run with very little writing.

Q. Do you know anything about how they run on the Missabe or the Iron Range, either one? Do you know anything about their system up there at all?

A. Yes, in a general way.

Q. How do you know it?

A. By observation and by what I have been told as I was up there, questioning people, and asking different people.

Q. You know by hearsay?

A. (Continuing) As to what their method was, as compared with the method of other lines and other sections.

Q. What is their method?

A. I found there was very little difference.

Q. What is their method?

A. It is the same as that followed in the Valleys, as to both coal and ore. There is no bill of lading made car by car. There are what they call car bills, simply tags tacked on the car, and one general waybill made out to cover a train shipment. The process is the simplest that has ever been investigated by the Interstate Commerce Commission, as far as expensiveness is concerned.

Q. And so you exclude the whole of that?

A. Yes; always with the proviso.

Q. And you also exclude buildings, fixtures and grounds entirely—$97,000 on the Iron Range and $74,000 on the Missabe?

A. Yes, sir.

Q. The same classes of buildings exist up there as on the Bessemer & Lake Erie? That is, station houses, roundhouses, houses where the train despatchers work, and so forth?

A. Yes.

Q. And the same testimony that you gave as to the Bessemer & Lake Erie would apply to both these companies in that regard, would it not?

A. Absolutely.

Q. I see that you have divided this ore, irrespective of distance in determining the cost in each case?

A. Yes. Also for the same reason, as that stated for the Bessemer & Lake Erie.

Q. What is the train loading of ore on the Missabe & Iron Range as compared with the train loading on the Bessemer & Lake Erie?

A. I have that among my records, but not here, and could not repeat it from memory. That is, I have notes to that effect. I have no official information.

Q. Do you know whether the Missabe & Iron Range Roads are more or less level lines of road, than the Bessemer & Lake Erie?

A. I should not say that either one was more or less level than the other, but I should think that the loaded movement is far more down grade up in the Northwest than it is on the Bessemer & Lake Erie. In other words, the return movement, the empties move up grade and the loaded down grade in the Northwest, whereas, so far as I know anything about the topography of the country down here, through which the Bessemer & Lake Erie moves—here and there as I have seen it—they have grades running both ways. There is no strict comparison between the two, from that standpoint.

MR. SEVERANCE: That is all.

RE-DIRECT EXAMINATION.

By MR. CORNEAU:

Q. Mr. Muller, did you ever hear or have any reason to suppose that anyone connected with the case before the Interstate Commerce Commission, in which Exhibit No. 40 was introduced, understood it to imply that your exhibit was intended to show the items of cost other than as you have explained them today?

A. No, I have never had any reason to suppose that anyone misunderstood the headings.

Q. I understood Mr. Severance to figure, when he asked about advertising expenses, that the larger portion of those expenses were allotted to freight traffic. Am I right about that, Mr. Severance?

MR. SEVERANCE: Yes, sir.

THE WITNESS: Yes.

MR. CORNEAU: And your inquiry was whether that was not unjustifiable, or possibly unjustifiable, depending on the circumstances. Do I quote you correctly?

MR. SEVERANCE: In substance, yes. Then he takes that out as against ore at another place, and leaves it as against all the other freight. I was just asking that to test the general theory under which he determines this thing.

By MR. CORNEAU:

Q. But if the circumstances were such that all of this advertising, we will assume, should have gone to passenger instead of freight, the item would still have been taken out of the total freight-operating expenses, would it not?

A. Out of ore-operating expenses, you mean?

MR. SEVERANCE: You mean on ore.

MR. CORNEAU: It would still have been taken out of ore, too. It would have been taken out of the total.

MR. SEVERANCE: It would have been only out of the ore.

By MR. CORNEAU:

Q. So that the only difference would be that this item of advertising, that you have taken out of the ore charges, according to Mr. Severance's assumption that the advertising expense should be charged to passenger service, should also be taken out of the remainder, if you were computing the per ton cost of hauling the other freight?

A. Yes, I should think so.

Q. Some question arose as to the extent to which there was a loaded movement of cars north. I show you a printed

table, purporting to be made from the annual reports of the Bessemer & Lake Erie Railroad Company.

MR. SEVERANCE: I object to the witness refreshing his recollection by a memorandum that he has not made himself, and which is not accounted for in any way.

MR. CORNEAU: I am not asking him to refresh his recollection. I am asking him to inform himself about something.

MR. SEVERANCE: I object to the witness informing himself so as to give testimony as a witness by reading some kind of a pamphlet that is presented to him by counsel.

By MR. CORNEAU:

Q. Just assume, Mr. Muller, that the figures you find there correctly show the tonnages of ore and coal moving over the Bessemer & Lake Erie in the years named, and on the assumption that such were the movements of these commodities, will you tell us what you think of the assignment of about 56 per cent. of the empty cars to ore?

MR. SEVERANCE: I object to the question as calling for hearsay, and as incompetent and immaterial.

MR. CORNEAU: I will state, for Mr. Severance's benefit, that the table I have shown the witness is the table appearing in volume 54 of the Stanley hearings, with which he is familiar, and which purports to be made from the reports to the Interstate Commerce Commission of the Bessemer & Lake Erie Railroad.

(By request, the stenographer repeated the pending question as follows:)

"Q. Just assume, Mr. Muller, that the figures you find there correctly show the tonnages of ore and coal moving over the Bessemer & Lake Erie in the years named, and on the assumption that such were the movements of these commodities, will you tell us what you think of the assignment of about 56 per cent of the empty cars to ore?"

THE WITNESS: I still believe that I was more than fair to the carrier in making this division.

By MR. CORNEAU:

Q. Just give us the figures, so that the record will show what figures you are using.

MR. SEVERANCE: That is objected to as incompetent and immaterial, and not a question for expert testimony, and as hearsay.

THE WITNESS: The average number of loaded cars per train mile is 22.86 in 1911, as against 12.78 for the same year for empties. It is 24.50 in 1910, as against 11.80 for empties; 21.89 in 1909, for loaded as against 13.33 for empties; 22.50 in 1908 for loaded as against 10.98 for empties, the average mileage operated being 203 miles, and the average haul of one ton is 117.49 in 1911; 118.08 in 1910, 120.86 in 1909; 117.72 in 1908. The distance between Conneaut Harbor and North Bessemer, the southern terminus of the road, very closely corresponds with the average haul per ton——

MR. SEVERANCE: It is less than that. You stated it was 104 miles, a while ago.

THE WITNESS: 104 miles, I think it is.

MR. SEVERANCE: That is what you said a while ago.

THE WITNESS: The nearest I recollect is about 104 miles.

MR. SEVERANCE: I move to strike out the statement of the witness that it closely corresponds with these figures that he has given, as he has previously stated the distance to be 104 miles, and that the distance is from 117.49 miles to 120.86 miles.

By MR. CORNEAU:

Q. Mr. Severance asked you, as I understood it—and if I am wrong he will correct me—if you did not know that there was a very small percentage of the ore cars that came south from Conneaut, which went back again in the other direction loaded with coal. Did you observe what the comparative tonnages of ore and coal were?

MR. SEVERANCE: Observe that where?

MR. CORNEAU: In this table that he has just looked at.

MR. SEVERANCE: I object to the witness stating what he observed or did not observe in any paper that may have been

handed to him there on the stand, and which he did not himself previously prepare.

By Mr. Corneau:

Q. Answer the question.

A. Yes. It ran from 40 to 50 per cent at least. The bituminous coal tonnage alone runs from 40 to 50 per cent of the ore tonnage.

RE-CROSS EXAMINATION,

By Mr. Severance:

Q. You say that this elimination of these various items is pursuant to a system which you have employed? Do I correctly understand you?

A. No, sir; you do not. My statement as to the uniform system had reference only to the separation of freight and passenger.

Q. You divide advertising—we will take that one item, just for illustration, as between freight and passenger, according to the system which you have adopted?

A. Yes.

Q. And which you have explained here?

A. Yes.

Q. You have charged no part of that advertising to ore, have you?

A. In this secondary table, no.

Q. If you were making up a statement of coal movement, you would not charge any of it to coal, would you? You would not charge any of the advertising up against coal traffic, would you?

A. That depends upon whether coal was being solicited: whether I knew or not that coal was being advertised for.

Q. You stated a while ago that because you had no means of knowing from the annual report, therefore you took it out?

A. Yes, sir.

Q. That would also apply to coal, would it not?

A. Unquestionably. I cannot any more allocate these items to one commodity than to another.

Q. And it would apply to cement?

A. Yes.

Q. And the final result would be, then, that it would be eliminated entirely from consideration as to any traffic, if you took one item after another?

A. So far as my figures are concerned, because, as I said several times, I leave that to the reviewing authority, or the Interstate Commerce Commission, which usually passes by its own accountants, on these figures.

Q. Well, then, the situation is this: According to your theory of your function as a witness, as an expert, if any item cannot be allocated to any particular kind of traffic on the face of the returns made to the Commission, you omit it in figuring the cost of handling that traffic?

A. Yes. I give the nearest guide I can give—

Q. Just answer my question. You omit it in figuring the cost of handling that particular kind of traffic. That is true, is it not?

A. Generally speaking, perhaps, yes, sir.

Q. Therefore, if you were called upon, if you should have the great felicity to be called upon as an expert in a series of cases that covered all kinds of traffic that might be handled by any particular railroad, or take the Bessemer, for example, you would take this out of each one, and the result would be that in the end that charge that you are not able to allocate to any particular species of traffic would be up in the air and not charged against any traffic?

A. I think that would be an ideal condition for the regulating authority—

Q. I am not asking you as to what would be an ideal condition—

A. You asked me what the result would be.

Q. I am asking you if that would not be the result.

A. That would be the result—an ideal situation for the regulating authority.

Q. Mr. Muller, I will ask you, as a matter of fact, whether or not the amount of money which you omit because you are not able to allocate it to any particular form of traffic, would not in the final result, you having made up figures as to each

class of traffic, be left in the air, not being charged by you to any kind of traffic?

A. Surely; that is correct.

Q. That is correct?

A. There is no question about that.

MR. SEVERANCE: That is all.

By MR. CORNEAU:

Q. Mr. Muller, will you state whether or not your sole reason for eliminating these items that were eliminated in exhibits 40, 41 and 42 was that there was no basis of allocating them between ore and other traffic—your sole reason and only reason?

A. As I have tried to make the record plain, that related to those five items, buildings and fixtures, No. 16, station employes, No. 63, station supplies and expenses, No. 66, and telegraph and telephone operation, No. 94, including superintendence attachable to it. Those were the only items. As I understood all along, Mr. Severance had those in mind and those only when he spoke of eliminating these items.

Q. That had been my understanding, but I understood Mr. Severance to refer to advertising in one of his questions.

A. Those were the only items.

By MR. SEVERANCE:

Q. One other question, in view of what has been said. Here is $172,327.83, total maintenance of ways and structures?

A. Yes.

Q. You eliminate all that?

A. Yes.

Q. And you eliminate that, do you not, because you are unable to allocate it?

A. No, that was not included in those items.

Q. Why do you eliminate that?

A. For the simple reason that that is the mileage proportion of that mileage of spur tracks used by the Bessemer and Lake Erie, exclusively, or almost exclusively, for assembling coal from mines to road movement. It is so shown in the annual report of the Bessemer & Lake Erie Railroad.

Q. I think you explained that once before.

A. So that item could not possibly be considered, and I took it for granted that Mr. Severance bore that in mind all along.

Q. I think you explained that answer in the same way with the $26,000 general expenses.

(Witness excused).

STIPULATION.

It is stipulated between the petitioner and those defendants represented by Messrs. Lindabury, Depue and Faulks that W. H. Peter and James Moore, of Washington, D. C., if called as witnesses would testify that they are employed by the Bureau of Statistics of the Interstate Commerce Commission, and that they compiled tables of which the documents marked "Government Exhibits No. 290 to No. 296, inclusive, are printed copies; that such tables were compiled from the annual reports of the railway companies referred to therein respectively to the Interstate Commerce Commission, and that they have compared the printed copies thereof, which are marked as exhibits in this case, with said annual reports now on file with said Interstate Commerce Commission, and that said exhibits are truly and accurately compiled from said annual reports of said railroad companies.

MR. CORNEAU: The petitioner offers in evidence the exhibits just referred to.

(The papers so offered and identified were introduced in evidence and marked "Government Exhibit No. 290, November 21, 1912", to "Government Exhibit No. 296, November 21, 1912", and will be found in the Volume of exhibits).

(Thereupon an adjournment was taken until to-morrow, Friday, November 22, 1912, at 9:30 o'clock a. m.)

THIRTY-FIFTH DAY.

COMMERCE COURT ROOM, SOUTHERN BUILDING,
WASHINGTON, D. C., NOVEMBER 22, 1912.

The hearing was resumed at 9:30 o'clock a. m., before SPECIAL EXAMINER JOHN A. BROWN.

Present on behalf of the United States, MR. DICKINSON, and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE and MR. REED.

Whereupon——

LUTHER CONANT, JR.,

was produced as a witness on behalf of the United States, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. COLTON:

Q. What position do you hold?

A. Commissioner of Corporations.

Q. How long have you been Commissioner of Corporations?

A. Since early in August of this year.

Q. What position did you hold prior to that?

A. Deputy Commissioner of Corporations.

Q. For how long a time were you Deputy Commissioner of Corporations?

A. Since June, 1909.

Q. What position, if any in the Government service did you hold prior to that?

A. Special Examiner in the Bureau of Corporations.

Q. And for how long a time?

A. Since December, 1904.

Q. Where did you graduate?

A. At the Massachusetts Institute of Technology in Boston.

Q. What did you do after graduation, from a business point of view?

A. Almost entirely newspaper work; for a short time with the Wool and Cotton Reporter in Boston, and after that, except for a few weeks, with the Journal of Commerce and Commercial Bulletin in New York City.

Q. How long were you with the Journal of Commerce?

A. For about eight and one half years.

Q. What kind of a paper is that?

MR. LINDABURY: I object. I do not suppose reportorial work specially qualifies a man as an expert.

MR. COLTON: Please repeat the question.

(The Stenographer read the question as follows:)

"Q. What kind of a paper is that?"

MR. LINDABURY: Objected to as irrelevant and immaterial.

A. That is a business paper, devoted exclusively to business news.

By MR. COLTON:

Q. What was your office on that paper, if any?

A. I was originally on the reporting staff, and beginning about 1899 I had charge of what they called their "outside" or industrial securities department; and the last three or four years I was their financial editor.

MR. LINDABURY: That was before 1904?

THE WITNESS: Before 1904, yes.

By MR. COLTON:

Q. What were you doing during the years 1897, 1898 and 1899, up to 1900?

A. Up to and through 1898, except for some leave of absence I took in 1898, I was on the general city staff. Early in 1899 I took charge of the industrial securities department, which was devoted largely to tracing the development of the great industrial consolidations of that time.

Q. Name some of the more prominent consolidations that you thus took up or reported concerning.

A. The Federal Steel Company, the American Tin Plate Company, the National Steel Company, the American Smelting and Refining Company, the Republic Iron & Steel Company, the American Agricultural Chemical Company, the Royal Baking Powder Company, the Otis Elevator Company, Sloss-Sheffield Steel & Iron Company—nearly all of them.

MR. LINDABURY: The Diamond Match Company?

THE WITNESS: That was before my time.

By MR. COLTON:

Q. Did you take any part in the preparation of the Bureau's report on the Steel Industry, Part I?

A. I did.

Q. What other officials in the Bureau of Corporations were prominent in the preparation of that report?

A. The report was under the general direction of the former Commissioner, Mr. Herbert Knox Smith. The men actively engaged in the preparation of the text other than myself, or the other man actively engaged in the preparation of the text, was Dr. Walker, now Deputy Commissioner of the Bureau. A number of other men assisted us.

Q. What was Mr. Baldwin's connection with the investigation if not with the preparation of the report itself.

A. Mr. Baldwin was originally in charge of the investigation under the direction of the Commissioner. His work, however, was largely devoted to matters not taken up in Part I of the report, although not wholly so.

Q. How about the part dealing with prices? Was he concerned in the preparation of that part, if you know?

A. He was, I understand. That part has not been issued.

Q. Have you prepared a table comparing the securities issued by the United States Steel Corporation in 1901, with the amount of securities of the constituent concerns and the cash acquired therefor?

A. Such a table was prepared, partly by me and largely under my direction by others on the investigation.

Q. In what connection was that prepared?

A. That was prepared in connection with an analysis of the capitalization of the United States Steel Corporation and the capitalization of the constituent companies acquired, this being intended as a basis for a comparison of capitalization and investment.

Q. Will you produce that table and have it marked for identification? Have you a copy of that table here?

A. No, I have not a copy. The printer's copy is in the office.

Q. I will ask to have that table marked for identification, if that is the table.

A. That is the table.

(The table referred to was marked, for identification No. 297.)

Q. It is taken from the report of the Commissioner of Corporations on the steel industry, Part 1, pages 113 and 114?

A. Yes, sir.

MR. LINDABURY: That is the report of July 1, 1911? I see that is the date on it.

THE WITNESS: It is.

By MR. COLTON:

Q. State whether or not the table thus prepared is based on information furnished by the United States Steel Corporation.

A. The table is based entirely on information so furnished by the Corporation.

MR. COLTON: I offer that table in evidence.

(The table so offered and identified was thereupon marked Government Exhibit Conant No. 297, November 22, 1912, and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared a table showing the amounts of Federal Steel Company's stock delivered by underwriting syndicate in exchange for stocks in companies acquired at or about the time of the formation of the Federal Steel Company, and cash secured in connection with said exchange?

A. Such a table was prepared by me in the course of the Bureau's investigation.

Q. I ask you to produce the table and have it marked for identification.

A. It is the table here shown, taken from page 119 of Part 1 of the Bureau's report.

(The table referred to was marked, for identification, No. 298.)

By MR. COLTON:

Q. State whether or not the table is based on information furnished by the United States Steel Corporation to the Bureau of Corporations.

A. It is.

Q. Does the table assume that the entire stock of the subsidiary companies was acquired by the Federal Steel Company?

A. It is prepared on that basis, so far as the three companies mentioned in the table are concerned.

Q. Do you know whether that is substantially correct or not?

A. That is shown to be the case by such authorities as the Financial Review of the Commercial and Financial Chronicle of New York City, a recognized authority on financial and corporate statistics.

Q. Do you know whether the listing statement filed on the Stock Exchange shows that substantially all the stock was acquired?

MR. LINDABURY: I object to that. That will appear from a comparison of the two. The best evidence of what that shows is the paper itself.

MR. COLTON: That may be stricken out, then. It is already in evidence.

I offer this table in evidence.

(The table so offered and identified was thereupon marked Government Exhibit Conant No. 298, November 22, 1912, and will be found in the volume of exhibits.)

By Mr. Colton:

Q. Have you prepared a table in respect to the net earnings, dividends, annual surplus and total surplus of the Illinois Steel Company, for the years 1889 to 1897, inclusive?

A. Such table was prepared, partly by myself, and under my direction, in the course of the Bureau's investigation.

Q. Will you produce that table?

A. I have not got it here. I can produce it from the report.

Q. Is that the table given on page 121 of the report?

A. Yes, that is the table.

Mr. Colton: I ask that the table be marked for identification.

(The table referred to was marked, for identification, No. 299.)

By Mr. Colton:

Q. From what sources of information was that table prepared?

A. That table was prepared from the Investor's Manual, which is in the nature of a supplement to the Economist of Chicago, according to my recollection, for the year 1898. Some supplemental information was obtained from the reports of the Illinois Steel Company, as given in the Commercial and Financial Chronicle of New York; but the figures are from the Investor's Manual.

Q. What can you say as to the character of the sources from which you prepared that table?

A. It is my understanding that the Investor's Manual is recognized as a reliable authority on these matters, especially the local securities of Chicago.

Mr. Colton: I offer the table in evidence.

Mr. Lindabury: I want to cross examine simply upon the authenticity of it.

By Mr. Lindabury:

Q. Mr. Conant, did you make up this table yourself, or did some one else in the office make it up?

A. I am very positive that I made up the original draft of this table myself; but that it was put in final shape, under my direction, by one of my assistants.

Q. Did you yourself compare this table as it is printed on page 121 of the report, with the original sources of information upon which it was based?

A. I think not. I usually leave such verification to the other members of our force. I compared it in the sense that I looked up the Investor's Manual to see that a substantially similar table was in the Manual, but I did not compare it in the sense of verifying each entry.

Q. You saw there was a table of that general character in the Investor's Manual?

A. I did.

Q. That is some private publication, I take it, is it not?

A. In the sense that any weekly newspaper of that sort is private.

Q. Is that a weekly newspaper—the Investor's Manual?

A. That is my understanding. I think it—the Economist—is a weekly newspaper published in Chicago.

Q. By some private concern, I take it?

A. I think it is published by a corporation; some private concern.

Q. It is one of those publications gotten out for sellers of securities, is it not?

A. I do not understand that.

Q. You know we have quite a number of that kind that are gotten out by brokers and private concerns now?

A. I would like to correct my testimony if that is the significance of the word "private." I understand it is a regular weekly publication somewhat similar to the Commercial and Financial Chronicle, but not wholly so.

Q. I meant private as distinguished from something published under public authority. It was not published under public authority, I take it?

A. I do not so understand it.

MR. LINDABURY: I object to this table as not based upon authentic or proven reliable data, and as not shown to have been made up from the data upon which the witness says he understands it is based.

By Mr. Colton:

Q. In what connection was this table prepared?

A. This was prepared in the regular course of the work of preparing the text for the Bureau's report, Part I of the Bureau's report.

Q. What report?

A. Part I of the Bureau's report on the Steel Industry.

Q. Have you at hand the paper from which this table was prepared?

A. I have, I think.

Q. I will ask you to compare the table with the original publication and see whether it is correct.

Mr. Lindabury: May I look at that?

The Witness: Certainly.

Mr. Lindabury: You mean to see whether or not the table is correctly made up?

Mr. Colton: Yes. I understood you were attacking that.

Mr. Lindabury: I was not attacking it, no.

The Witness: Do you wish a comparison made item by item?

Mr. Colton: Yes, if you please. We will withdraw that table.

By Mr. Colton:

Q. Have you prepared a table showing the highest and lowest quotations of the Illinois Steel Company's stock monthly, January, 1895, to June, 1898?

A. Such a table was prepared under my direction.

Q. Will you produce the table?

A. This is the table (producing table).

Mr. Colton: I ask that it be marked for identification.

(The table referred to was marked, for identification, No. 300.)

By Mr. Colton:

Q. This table was prepared at the request of the petitioner in this case?

A. It was.

Q. From what sources was this table prepared?

A. This was prepared from the Financial Review for the year 1900, as stated on the face of the table.

Q. The table does not show whether it is common stock or preferred stock. Can you answer as to whether that is common stock of the Illinois Steel Company?

A. That is common stock.

Q. Was there any other kind of stock?

A. There was not.

Q. State whether or not the publication from which this table was prepared is an authority upon such quotations.

A. It is so recognized in financial circles generally.

Q. Are these the highest and lowest quotations monthly?

MR. LINDABURY: It says so on the heading. That is all he knows about it, I suppose.

THE WITNESS: That is as stated in the Financial Review.

MR. COLTON: I offer this table in evidence.

MR. LINDABURY: I desire to ask a few questions about it.

By MR. LINDABURY:

Q. Did you yourself compare this with the Financial Review personally?

A. I did not.

Q. Who did?

A. That was prepared by our computing division, under the direction of the head of the division, on instructions from me.

Q. These are Stock Exchange quotations, are they, as you understand?

A. That is my understanding; but I think the Financial Review simply states these as quotations in the given markets.

Q. What markets?

A. May I refresh my memory on that from the record?

Q. I do not believe so, because you did not make it. So far as you know, these are stock quotations at some stock market or other?

A. I think they are all quotations of the New York Stock Exchange.

Q. Wall Street quotations?

I object to the table on the ground that the source from which it is made up is not proof of the quotations, and because the quotations themselves are irrelevant, inconsequential and immaterial.

(The table so offered and identified was thereupon marked Government Exhibit Conant No. 300, November 22, 1912, and will be found in the volume of Exhibits).

By Mr. Colton:

Q. I ask you to refer to the table on page 122 of the Bureau's report, and state in what connection that table was prepared.

A. That table was prepared in the ordinary course of the work of getting out the Bureau's report on the steel industry, Part 1.

Q. I ask that you read that table into the record.

Mr. Lindabury: Objected to as irrelevant, immaterial and argumentative.

The Witness: (Reading.)

Year.	*Highest.*	*Lowest.*
1895	82¼	59
1896	75	33
1897	50	29½
1898 (January to July)	60	44½

By Mr. Colton:

Q. Does that refer to the quotations of the Illinois Steel Company's stock?

A. It does.

Q. By years?

A. By years.

Mr. Lindabury: It refers to the preceding table, does it not?

Mr. Colton: Yes.

MR. LINDABURY: I mean, for the sources of information, it refers to the preceding table?

MR. COLTON: Yes.

THE WITNESS: It does.

By MR. COLTON:

Q. Have you prepared a table in respect to the market prices of the stock of the Minnesota Iron Company for the years 1894 to July, 1898?

A. Such table was prepared by our force, under my direction. I should say that the table extends to December, 1898. Also that it begins in 1890.

MR. COLTON: I ask that the table be marked for identification.

(The table refered to was marked, for identification, No. 301.)

By MR. COLTON:

Q. Is this table by months or by years?

A. This table shows the quotations both by months and by years.

Q. In what connection was this table prepared?

A. That table was prepared at your request.

MR. LINDABURY: About when?

MR. COLTON: Just yesterday, I think.

MR. LINDABURY: Recently, then?

THE WITNESS: Within the past day or two.

By MR. COLTON:

Q. From what sources was this table prepared?

A. This table shows that it was prepared from the Financial Review, issues of 1895 and 1900.

MR. COLTON: I offer the table in evidence.

By MR. LINDABURY:

Q. How do you know the Financial Review is an authority? Have you been in the stock business?

A. No, sir.

Q. How do you know it is an authority? Who told you so?

A. For several years I was financial editor of the Journal

of Commerce, as already stated, and prior to that engaged in work in Wall Street, and had a rather wide acquaintance with men who consulted this periodical and who evidently recognized it, as we did in our own office, as perhaps the best authority on such matters.

Q. By "authority" you mean an accurate chronicler of events?

A. In so far as these quotations are concerned; yes, sir.

Q. Was this a listed stock?

A. I am very positive that it was.

Q. You would not be sure about that, would you?

A. The stock was placed on the list of the Stock Exchange at one time, and I assume it was listed at this time.

Q. Do you happen to know whether it was or not? Because assumptions do not quite answer for knowledge.

A. I know that the stock was listed at one time.

Q. As early as 1890?

A. That is my recollection. I think it was somewhat earlier than 1890.

Q. Do you think it was listed down to 1898?

A. I am very positive indeed of it.

MR. LINDABURY: That is all and I object as irrelevant and immaterial and not proof of the selling price of the stock or of its value.

(The table so offered and identified was thereupon marked Government Exhibit Conant No. 301, November 22, 1912, and will be found in the volume of exhibits).

By MR. COLTON:

Q. Have you prepared a table in respect to the market prices of the Federal Steel Company's common and preferred stock from October, 1898, to December, 1898, inclusive?

A. Such a table was prepared in our office under my direction.

Q. In what connection was that table prepared?

A. In the regular course of the work of getting out Part I of the Bureau's Steel Report.

Q. In what manner was the table prepared?

A. This table shows on its face that it was prepared from

quotations given in the New York Times, taking bid quotations on Thursday of each week, unless otherwise noted on the face of the table.

Q. State whether or not the New York Times is a reputable authority on such quotations?

A. It is so recognized.

MR. LINDABURY: Where?

A. (Continuing) In New York City and the Wall Street District especially, making a specialty of financial news.

MR. COLTON: I offer the table in evidence.

By MR. LINDABURY:

Q. What are these—averages?

A. I think the table states that those are the closing bid quotations. I do not think I need to refresh my recollection as to that.

Q. It is the last quotation?

A. The bid quotation.

By MR. COLTON:

Q. The last quoted bid?

A. At the close of the day, yes.

MR. LINDABURY: Objected to as irrelevant, and because it is no proof of the selling price of the stock at the time mentioned, and is incompetent and inconsequential, and I object because the dates are immaterial, and the prices at those dates are immaterial.

By MR. COLTON:

Q. Does "common" refer to common stock and "preferred" refer to preferred stock as given on that table?

A. Yes, sir.

MR. LINDABURY: How does he know it? He did not put it down. I do not believe he knows it any better than we do.

MR. COLTON: We can have that verified if you wish.

MR. LINDABURY: Of course that is obvious, that it does.

(The paper so identified was offered in evidence and marked "Government Exhibit Conant, 302, November 22, 1912", and the same will be found in the volume of exhibits).

By MR. COLTON:

Q. What was the capital stock of the Lorain Steel Company of Ohio at the time that stock was acquired by the Federal Steel Company?

MR. LINDABURY: Objected to as the witness has no personal knowledge on that subject, I presume. You mean as indicated by some publication or other?

MR. COLTON: I think it would be indicated by information furnished to the Bureau of Corporations.

MR. LINDABURY: Why not ask him that, then?

MR. COLTON: I am going to ask him that. I am going to follow it up with the source of his information.

MR. SEVERANCE: You did not first ask him if he knew, but you asked him what it was, flat.

MR. COLTON: I asked him what it was, and I expected him to answer if he knew.

MR. LINDABURY: I object because it does not appear that the witness has any information on the subject.

(Upon request the stenographer repeated the question as follows:)

"Q. What was the capital stock of the Lorain Steel Company, of Ohio, at the time that stock was acquired by the Federal Steel Company?"

By MR. COLTON:

Q. Answer the question.

A. If I recollect, the capital stock was $9,000,000.

Q. What is the source of your information?

A. The capital stock was furnished to the Bureau in the course of the Bureau's investigation. Also readily obtainable from authoritative manuals.

Q. Furnished to the Bureau by whom?

A. By the Steel Corporation.

Q. What was the capital stock of the Johnson Company, of Pennsylvania?

MR. SEVERANCE: The same objection.

A. It would be a matter of recollection. $3,000,000.

Q. Have you any data that you can refer to that would give us accurate figures on that?

A. The Bureau's Report.

Q. Please refer to that and give it as given in the Bureau's report. I think that is page 124. (Continuing after a pause): Have you referred to page 124 of your report?

A. The stock of the Johnson Company, of Pennsylvania, I find was $3,000,000. The stock of the Lorain Steel Company, of Ohio, as previously stated, was $9,000,000.

MR. REED: The stock issued, or the stock authorized.

MR. LINDABURY: There is your trouble. That is authorized stock. That was not the issued stock.

THE WITNESS: Authorized stock.

By MR. COLTON:

Q. How much of that stock was issued?

A. At least $5,017,800 was issued.

Q. Par value?

A. Par value, in all cases.

Q. Do you know how much of the Federal Steel Company's stock was issued in exchange for that stock?

A. I could not testify from memory.

Q. Have you any source of information that you can give?

A. I have. Part I of the Bureau's report on the steel industry.

Q. State the details with respect to the exchange of the Federal Steel Company's stock for the stock of the Lorain Steel Company, of Ohio, and the stock of the Johnson Company, of Pennsylvania?

A. There was issued for $5,017,800 of the Lorain Steel Company, of Ohio, and $3,000,000 of the Johnson Company, of Pennsylvania; Federal Steel preferred stock, $1,322,200, and Federal Steel, common stock, $1,054,800; and cash was paid to the amount of $2,647,231. In this transaction the Federal Steel Company received $264,455 in cash, with the companies acquired.

Q. What was the original cost of the Lorain Company's properties at the time that they were acquired by the Federal Steel Company?

A. Almost exactly $4,000,000.

MR. LINDABURY: Objected to as calling for hearsay.

By MR. COLTON:

Q. What was the source of your information, Mr. Conant?

A. The United States Steel Corporation.

MR. LINDABURY: I object to that. If the Steel Corporation furnished information in regard to that, I suppose it was in writing.

By MR. LINDABURY:

Q. All the information you got from the Steel Corporation was in writing, was it not?

A. This particular information was not.

Q. Where did you get that?

A. From Mr. Filbert.

Q. Are you sure about that?

A. I am positive.

By MR. COLTON:

Q. Was the information in writing?

A. It was not.

MR. LINDABURY: From whom was the information?

A. From Mr. Filbert.

MR. LINDABURY: I object to that. Casual information from Mr. Filbert is not an admission by the Steel Corporation.

By MR. COLTON:

Q. State whether or not it was casual information?

A. No, sir; I do not so regard it. We had tables before us, and on the basis of the information I changed the figures allotted to the Lorain Steel Company to $4,000,000.

Q. Did you prepare a summary of the market valuations of the Federal Steel Company's stock, preferred and common, and the American Steel & Wire Company's stock, preferred and common, and the stock of other subsidiaries of the United States Steel Corporation?

A. Such a table was prepared in the regular course of the Bureau's work, under my direction.

Q. I ask you to produce that table.

A. I have the table here.

MR. COLTON: I ask that the table be marked for identification.

(The table referred to was marked, for identification, No. 303.)

By MR. COLTON:

Q. What subsidiaries of the Steel Corporation are covered by the table?

A. The Federal Steel Company, the American Steel & Wire Company, the American Tin Plate Company, the American Steel Hoop Company, the National Steel Company, the American Sheet Steel Company, the National Tube Company, the American Bridge Company and the Shelby Steel Tube Company. These are the only companies for which quotations are given in the table.

Q. In what connection was that table prepared?

A. In the regular course of the preparation of the Bureau's report, Part I, on the steel industry.

Q. From what sources was that table prepared?

A. That should be stated on the table.

Q. What are they?

A. The sources are not stated on this particular summary table. They were taken from the New York Times, except as noted on the subsidiary detail table, of which this is a summary.

Q. In what manner was the table prepared?

A. This table was prepared from closing bid quotations once a week, as published in the New York Times.

Q. Then there are no exceptions to the statement that it was taken in every case from the New York Times?

A. Except as noted on the subsidiary table.

Q. I would like you to give the exceptions, so that we may have them on the record.

A. I find that the quotations of the Shelby Steel Tube Company are taken from The Economist; that quotations of the American Sheet Steel Company are means of highest and lowest for the preferred and common stock, respectively, as

given in the Manual of Statistics, these quotations being in the Pittsburgh market for that company. These are the only exceptions noted on the subsidiary table.

Q. What can you say as to the authority of each of the several publications, in respect to price quotations of stocks, and taking up each publication separately?

MR. LINDABURY: He has covered the Times and The Economist, has he not?

MR. COLTON: All right, then; skip the Times and The Economist.

MR. LINDABURY: What other is there that has not already been covered?

THE WITNESS: The Manual of Statistics.

MR. LINDABURY: Yes. That is all, is it not?

MR. COLTON: I think that is the only other one. He said something about Pittsburgh, in there.

THE WITNESS: That was the Pittsburgh market, that I referred to.

By MR. COLTON:

Q. Take up those other than The Economist and the New York Times.

A. The Manual of Statistics is a widely used and widely recognized authority on corporation and financial statistics and similar information.

Q. You say it was taken from weekly quotations. Do you mean the average is an average of the weekly quotations?

A. The averages shown on the summary table are averages of the weekly quotations given in the subsidiary tables. These averages are then multiplied by the amounts of stock of the respective subsidiary or constituent companies acquired.

Q. And the result obtained thereby also appears on the table?

A. It does.

MR. COLTON: I offer in evidence the table which has been marked for identification No. 303, entitled "Summary of Market Values Based on Outstanding Amounts of Stock," together with detailed weekly quotations attached thereto, and

ask counsel for the United States Steel Corporation to consent that the summary only be printed.

MR. LINDABURY: We consent that the summary only be printed, but said tables are objected to as incompetent, irrelevant and based on hearsay.

(The table so offered and identified was thereupon marked Government Exhibit Conant No. 303, November 22, 1912, and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared a table showing the approximate market valuations of securities acquired by the United States Steel Corporation in 1901, as indicated by average market prices, 1899 to 1900?

A. Such a table, so far as the prices were available, was prepared in the course of the Bureau's investigation into the steel industry.

Q. Is that the table that was so prepared? (indicating).

A. It is.

MR. COLTON: This table will be found on page 170 of the report.

By MR. COLTON:

Q. What does this table show, except as to the following companies: One-sixth interest in the Oliver Iron Mining Company, and Pittsburgh Steamship Company; total, mortgages and purchase money obligations, underlying bonds and scrip at par, cash capital, and grand total; leaving those figures out, what does it show as to the companies named on it? Explain the table.

A. As to the other companies, with the exception of the American Sheet Steel Company, and the Lake Superior Consolidated Iron Mines, and the Carnegie Company, it shows the amount of stock, both preferred and common, acquired by the Steel Corporation, and the average market prices of those stocks for the two years, 1899 and 1900; also the value of the stocks so acquired, computed at those average prices. In the case of the American Sheet—

Q. (Interposing). Average made in what manner?

A. The averages were made in the manner just described in discussing the summary table.

MR. LINDABURY: Made up from that table, I take it.

THE WITNESS: Were made up from that table.

MR. DICKINSON: From which table?

THE WITNESS: From the table of summary of valuations based, with the exceptions noted, on the closing bid quotations in the New York Times.

MR. COLTON: I ask that the table be marked for identification.

(The table referred to was marked for identification Government Exhibit No. 304.)

MR. COLTON: I will offer this table in evidence, but state that the Government will not rely upon the following:

"Oliver Iron Mining Company, one-sixth interest, $200,000 and Pittsburgh Steamship Company one-sixth interest $221,700."

That is in the column under "Amount of stock acquired by United States Steel Corporation."

Also "Value at average price $9,250,000;" nor upon the total as made up in the table under "Amount of stock acquired by United States Steel Corporation," value at average price as given in the table; nor upon "Mortgages and purchase money obligations," as given in the table under "Value at average price;" nor upon "Underlying bonds and Scrip at par," as given under the column "At average price;" nor "Cash capital," as given in the table; nor upon "Grand total," as given in the table under "Value at Average price;" nor upon notes 5 to 7, inclusive.

MR. LINDABURY: Do I correctly understand that counsel for the Government repudiate those figures that they do not rely on?

MR. COLTON: We do not rely on them.

MR. LINDABURY: Do you repudiate them?

MR. COLTON: I am designating the portions of the table upon which I will rely, by designating the portions on which I will not rely.

MR. LINDABURY: I do not know what counsel means by

saying on what they "rely". They may not rely on any of it. I am asking whether or not they intend to claim the portions of the table they do not offer are unreliable, inaccurate, or that for any other reason they repudiate those portions of the table, while they seek to put in evidence other portions.

MR. COLTON: I will state that the table will show for itself why we do not offer that in evidence. It is carefully explained that they are not market quotations, and we are offering this in reference to market quotations, and for that reason we have left them out.

MR. REED: You have offered the whole thing in evidence.

MR. COLTON: But I am not relying on that portion, and that is the reason of it.

MR. LINDABURY: I object, on the ground that counsel cannot offer portions of the table without offering the table as a whole, and upon the ground that no authenticity has been shown for a portion of the table of a higher character than that shown for the table, and if the work of the Department cannot be relied on altogether, it cannot be relied upon as a part, even in connection with a newspaper published in New York.

MR. COLTON: I offer this in evidence.

(The paper so identified and offered in evidence, heretofore marked for identification, was marked "Government Exhibit Conant No. 304, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. I ask you to explain the manner in which the average market price of the Lake Superior Consolidated Iron Mines was obtained.

A. This is not an average price, but is the highest quotation, an asked quotation, so-called, which the Bureau found after very diligent search.

Q. Is that so stated on the table itself?

A. The footnote 3 states that "The asked price in 1900" does not include lower prices recorded in 1900.

MR. LINDABURY: That is included in your statement of what the Government does not rely on, is it not?

MR. COLTON: No. I am relying on the Lake Superior Consolidated Iron Mines.

By MR. COLTON:

Q. In regard to the Carnegie Company's bonds and stock, how were the average market prices of the stocks and bonds arrived at in said table?

A. The price of the stock as given was obtained from the Pittsburgh Stock Exchange, and also from the financial editor of the Pittsburgh Gazette. The price of the bonds was obtained from brokerage houses in Pittsburgh, or a brokerage house in Pittsburgh, and also from the financial editor of the Pittsburgh Gazette.

Q. Why did you limit yourself to those sources of information?

A. These securities were exceedingly inactive. So far as the Bureau was able to ascertain, only 13 shares of the Carnegie Company's stock were sold in the open market. The bonds were somewhat more active and had a considerable number of sales, but it would not be what you would call an active issue. The stock of the Lake Superior Consolidated Iron Mines was very inactive.

Q. Why did the Bureau fail to get the average selling price of a one-sixth interest in the Oliver Iron Mining Company and the Pittsburgh Steamship Company?

A. The Bureau was unable to find any quotation of the stock of those two companies.

Q. Does that fact appear upon the table? Please look at the table and see.

A. It appears from the table that no average price whatever is given in the tables.

Q. In what connection was the said table prepared?

A. It was prepared in the regular course of the work of the Bureau's investigation of the steel industry.

Q. State whether or not after the acquisition of the Consolidated Iron Mines by the United States Steel Corporation the ore properties controlled by the United States Steel Corporation were partly fee and partly leasehold.

A. They were.

Q. Upon what information do you base that statement?

A. On information furnished to the Bureau by the Corporation in the course of the investigation, on a very extensive reading of such authorities as the Iron Age—

MR. LINDABURY: And I suppose you could base it on the admission in the Answer in this case. It is alleged in the Petition and admitted in the Answer; it is a non-controverted point.

By MR. COLTON:

Q. What proportion of such properties were leasehold?

A. A large proportion of the total was in the form of leaseholds?

Q. Approximately what proportion was leasehold?

MR. LINDABURY: Before that I would like to know whether he has figured it out.

THE WITNESS: I have made some rough calculations.

(The stenographer repeated the preceding question, as follows:)

"Q. Approximately what proportion was leasehold?"

MR. LINDABURY: To what date does that refer?

MR. COLTON: As of the date shortly after the taking over of the Consolidated Iron Mines.

MR. LINDABURY: May 1st, or about that time.

By MR. COLTON:

Q. May 1st, 1901.

A. My judgment, based upon the information I had available, was that well over half of the total was in the form of leaseholds.

Q. What was the character of that information other than the Iron Age? I want the information in this connection that came from the Corporation itself.

A. This conclusion was partly based on a schedule of the ore properties of the Steel Corporation as of 1904, which was furnished in the regular course of the investigation and which listed a large number of the mines, giving estimated tonnage at that time; also a statement as to whether the mine was owned in fee or held on a lease, and which gave, in addition to the active mines, a list without such tonnages, of many reserve properties.

Q. Your answer as of 1901 was based in large measure as to the condition of the properties in 1904?

MR. LINDABURY: No, he did not say that.

A. To a considerable extent on the information indicated by the statement as of 1904.

MR. LINDABURY: That is, he got the information in the 1904 statement, but it related back, as he understood, to 1901.

By MR. COLTON:

Q. What was the total book investment of the subsidiary companies of the United States Steel Corporation in improvements on mining properties in May, 1901, after the acquisition of the Consolidated Iron Mines?

A. Based on information furnished by the Corporation the total was approximately $9,000,000. That is an approximate figure.

MR. LINDABURY: As of 1901?

THE WITNESS: As of 1901.

By MR. COLTON:

Q. What do you include within the term "improvements" in the last answer?

A. I include, in addition to what we would call the ordinary improvements, the stripping charges for future development, as reported by the Corporation.

MR. LINDABURY: That does not tell an ordinary man, like me, for instance, what the ordinary improvements are.

THE WITNESS: The ordinary improvements, as we understood the information furnished by the Corporation, would include buildings, machinery, shafts and similar items.

By MR. COLTON:

Q. Does or does not that estimate cover investments in opening up mines such as stripping the over-burden, the construction of shafts, galleries, etc.?

A. I think I have just stated that it included the stripping the estimate of $9,000,000.

MR. LINDABURY: Did it include the construction of galleries and such like, which was the last question?

THE WITNESS: That is my understanding.

By MR. COLTON:

Q. Have you any data at hand by which you can refresh your recollection on that?

A. I have a telegram and letter at hand from the Corporation on this point.

Q. What was the par value of the stock of the Duluth, Missabe & Northern Railway in 1901?

A. According to my recollection, it was $2,512,000. Perhaps I should refresh my recollection on that.

Q. You can give the exact figures from data, if you wish to do so, and afterward state the sources of your information.

MR. LINDABURY: Have you got the data there?

THE WITNESS: Yes; it would be in the Bureau's report.

MR. COLTON: Page 211.

THE WITNESS: I find the par value of the capital stock was $2,512,500.

By MR. COLTON:

Q. What were the outstanding bonds of said railroad?

A. My recollection of the total outstanding bonds is that it was in excess of $7,000,000.

Q. Have you looked at page 211 of the Bureau's report?

A. That shows the amount owned, not the total amount outstanding.

Q. You mean owned by the company?

A. By the Lake Superior Consolidated Iron Mines.

Q. What was the amount owned by the Lake Superior Consolidated Iron Mines?

A. $2,305,000.

MR. LINDABURY: Where do you find that?

THE WITNESS: About two-thirds of the way down page 211 of the Bureau's report, the middle of the last paragraph.

MR. REED: A moment ago the witness stated his recollection of the amount of the outstanding bonds. The exact figure is given at the top of page 149 of the report. Why not make it explicit?

MR. COLTON: All right.

THE WITNESS: (After consulting the report). The outstanding bonds were $7,765,000.

By MR. COLTON:

Q. What was the surplus of said railway as of June 30, 1901?

A. $3,595,500.

MR. LINDABURY: Where did you get that? Where is it in this report?

THE WITNESS: That is in the next to the last line on page 211. It is given in Pool's Manual; also in the Interstate Commerce Commission Report on Railway Statistics.

By MR. COLTON:

Q. Did the Corporation furnish the Bureau of Corporations with any computation in respect to the amount of ore that the Consolidated Iron Mines possessed as of the date April 1, 1901?

A. It did.

MR. LINDABURY: Have you got that here?

THE WITNESS: Here is a copy. We have the original.

MR. REED: This information was furnished on April 13, 1909, on figures which were compiled after January 1, 1908? Is not that so?

THE WITNESS: The letter of the Steel Corporation to the Bureau indicates that.

By MR. COLTON:

Q. Is the character of the ore specified in the letter, or in your letter calling for the information, so that you can tell as to whether it was standard ore or not?

A. I do not find it specified there.

Q. What is the amount of ore so estimated by the Corporation?

A. 487,208,034 tons.

Q. I will ask you to produce and read in evidence the letter furnishing the information to the Bureau of Corporations.

A. The letter is as follows:

UNITED STATES STEEL CORPORATION,

Office of the Comptroller,
EMPIRE BUILDING, NEW YORK, APRIL 13, 1909.

MR. W. H. BALDWIN,
Special Examiner, Bureau of Corporations,
Dept. of Commerce & Labor, Washington, D. C.

Dear Sir:

Referring to your letter of the 8th April, particularly paragraph therein number (4):

Our Mining people have furnished us figures with reference to the tonnage of the Ore Reserves of the Lake Superior Consolidated Iron Mines as at April 1, 1901, and the changes which have been made therein since that date up to January 1, 1908. This information has not been furnished to us in detail as to mines, simply in the aggregate, and these figures I give you as below:

Tonnage April 1, 1901,		487,208,034
Less, tonnage transferred to other Subsidiary Mining Companies,		40,731,620
		446,476,414
Add, tonnage acquired through transfer from other Subsidiary Companies and by purchase or lease,		33,064,559
		479,540,973
Less, shipments of ore from mines from April 1, 1901, to January 1, 1908,		29,511,228
Reserve, January 1, 1908,		450,029,745

I note you say in paragraph (5) of your letter of April 8th that you would like to have this same information for the Oliver Iron Mining Company properties. I will make a note

of this and see if we can secure it for you. Will take the matter up with you upon my return.

Yours truly,
(Signed) W. J. FILBERT,
Comptroller.

Q. I ask you to read into evidence the part of the Bureau's letter of April 8, 1909, dealing with the subject matter referred to in the Corporation's letter to the Bureau of April 13, 1909.

A. The letter is dated April 8, 1909, addressed to Mr. W. J. Filbert, Comptroller of the United States Steel Corporation, 71 Broadway, New York, N. Y.

After the introductory paragraph it reads:

"I do not know what progress you have made toward furnishing some of the information of which we have talked, and to the important parts of which I may refer, as follows:"

* * * *

The next I find relating to ore is:

"(3) You also told me that the itemized statement of the valuation of the properties on December 31, 1907, was well advanced, and I understood it would be sent soon. This I shall be glad to have, especially the statement as to the ore mines, for which I think you wrote to Duluth quite a long time since.

"(4) There is also the statement of ore taken from the Lake Superior Consolidated Iron Mines from the time they were acquired by the Steel Corporation to December 31, 1907, and of the quantity remaining in them, according to the estimate of January 1, 1908. You understand the reason why I want the definite figures in regard to these mines. Some of them have been transferred to some of the other operating companies, but what I want, as you know, is to follow the properties through, taking the original group with any additional discoveries on the properties together, and without reference in this connection as to who the present holders or operators are. * * *"

That is all pertaining to this subject matter.

The letter is subscribed "Yours very truly, William H. Baldwin, Special Examiner."

Q. State whether or not the prevailing value of fee ore per ton at a given time will be greater or less than the prevailing rates of royalties for the same class of ore similarly situated, having the same conditions as to cost of production.

MR. LINDABURY: Objected to upon the ground that that seems to involve expert knowledge which the witness has not been shown to have.

By MR. COLTON:

Q. You may answer the question.

A. Well, I think it is elementary common sense that a man will not pay as much in cash in advance as he would pay if he could distribute payment over thirty or forty or fifty years; or, conversely, the seller would take less if he received payment in cash than he would insist upon if the payments were to be made extending over a period of thirty or fifty years.

MR. LINDABURY: Objected to on the ground that it is a mere disquisition.

By MR. COLTON:

Q. Please discuss the question of how a high rate of royalty affects the value of ore properties to one holding the ore by virtue of leases.

MR. REED: Objected to for the reason that the witness has not been shown to be competent to express such an expert opinion.

MR. LINDABURY: Further, that it is not a question of expert evidence.

MR. COLTON: How can both objections stand?

By MR. COLTON:

Q. Answer the question.

A. The interest of the lessee in a leasehold is the equity over and above the royalty. The higher the royalty the less the value of the equity in the lease.

Q. Have you prepared a table in respect to the average rate of royalty on iron ore produced in the Lake Superior region in 1902 and 1903?

A. Such a table, covering a very large portion of the ore of that region, was prepared in the course of the Bureau's investigation.

Q. Where does that appear?

A. At page 219.

Q. Is this the table? (indicating).

A. Yes.

MR. SEVERANCE: Does your question involve leases made during those years, or shipments made during those years?

MR. COLTON: I am going to bring out just exactly what it involves later on in the course of the examination.

By MR. COLTON:

Q. You say that is the table?

A. That is the table I had in mind.

MR. COLTON: I ask that the table be marked for identification.

(The table referred to was marked for identification "Government Exhibit No. 305").

By MR. COLTON:

Q. Explain the table and tell what it covers. Take your time.

A. This table shows the tonnages of ore shipped, these shipments being practically identical with production in the years 1902 and 1903, by ranges in the Lake Superior region, and the average royalties paid on these shipments; the old ranges, including the Marquette, Menominee, Gogebic and Vermillion and the Mesabi range is shown separately. In the case of the Mesabi range about 75 per cent. of the production is included, and in the case of the old range about 50 per cent.

MR. REED: 75 per cent. of the production of leased ore or all of the ore?

THE WITNESS: Of all ore on the range. The averages include only the leased ore, but the percentages I gave you are based on the total outputs of these ranges.

By MR. COLTON:

Q. Have you separately a similar table showing the rates

of royalties in respect to said matters for the United States Steel Corporation alone?

A. I have a somewhat similar table, except that the old ranges are not distinguished.

Q. Will you produce that table?

A. That information was furnished to the Bureau in accordance with an understanding that the details would not be made public for the Steel Corporation alone without consent, —as I recall. That was before I came into the investigation, but I find the record indicates that.

MR. COLTON: The Government will subpoena the production of that table by the United States Steel Corporation, or request in the usual way the production of that table by the United States Steel Corporation, unless they will consent that we may use the copy that the Bureau has.

Referring to the paper marked for identification No. 305, I offer the same in evidence.

MR. REED: Objected to as hearsay and as incompetent, irrelevant and immaterial.

By MR. COLTON:

Q. From what sources did you get the information in table marked for identification 305?

A. This table was compiled on information furnished directly to the Bureau by the Steel Corporation and by a considerable number of mining companies outside the Steel Corporation in the regular course of its work.

MR. REED: That is the table at page 219. It appearing from the last answer of the witness that this exhibit is based on *ex parte* statements of other companies than those named as defendants in this action, we renew our objection to this table as being mere hearsay and therefore incompetent.

(The paper so identified and heretofore marked for identification was introduced in evidence and marked "Government Exhibit Conant No. 305, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared a table showing the assessed valua-

tions of all the iron mining companies in Michigan and Minnesota for the years 1901 to 1906, inclusive?

A. A table was prepared in the course of our work under my direction, covering those years, as I recall.

Q. Have you that table at hand?

A. Yes, sir.

Q. Is that the table? (indicating at page 233).

A. It is.

MR. COLTON: I ask that this table be marked for identification.

(The table referred to was marked for identification Government Exhibit No. 306.)

By MR. COLTON:

Q. Referring to the table marked No. 306, for identification, I ask you to explain the manner in which the table was prepared.

A. The valuations for the State of Michigan were secured by correspondence with the State authorities, in manuscript form or typewritten form. Those for the State of Minnesota were taken from a printed pamphlet issued by the—I think it was the auditor of the County of St. Louis, Minnesota, but actually furnished by the Secretary of the Minnesota Tax Commission. That was through correspondence.

Q. Well, if you want to refresh your recollection you can do so.

A. (After referring to memorandum) Pamphlet entitled "Tonnage assessed valuations, rate of taxation, and taxes on iron mines, St. Louis County, Minnesota, for 1908, County Auditor's Office."

Q. State whether or not that was prepared in connection with the investigation of the Bureau of Corporations into the steel industry?

A. It was.

MR. COLTON: I offer it in evidence.

MR. REED: That is objected to as incompetent, being hearsay; and, further, incompetent because no evidence of the value of the ore is included in the assessment, and objected to as irrelevant and immaterial.

(The paper so identified was offered in evidence and marked "Government Exhibit Conant No. 306, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared a table showing the highest and lowest quotations of preferred and common stock on the New York Stock Exchange of the stock of the United States Steel Corporation April, 1901, to March, 1902, inclusive, by days?

A. Such a table was prepared in the course of the Bureau's investigation.

Q. Will you produce the table?

A. This is a typewritten copy of the original table (indicating).

MR. COLTON: I ask that it be marked for identification.

(The paper referred to was marked for identification "Government Exhibit No. 307").

By MR. COLTON:

Q. From what source was that table prepared?

A. This was prepared from the price quotations in the Commercial and Financial Chronicle.

Q. What is the reputation of the Commercial and Financial Chronicle in respect to quotations of stock and other securities?

MR. REED: Objected to as incompetent, irrelevant and immaterial.

A. It is a recognized authority on quotations of securities.

By MR. COLTON:

Q. Are you familiar with the publication?

A. I am.

MR. COLTON: I offer the table in evidence.

MR. REED: Objected to as incompetent, irrelevant, immaterial and inconsequential.

(The table so identified, was offered in evidence and marked "Government Exhibit Conant No. 307, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared tables in respect to the market quotations of the bonds of the United States Steel Corporation?

A. Such tables were prepared under my direction.

Q. At whose direction?

A. At the request of the Government.

Q. Are these the tables? (indicating).

A. They are.

Q. From what source were the tables prepared?

A. The tables showing the highest and lowest quotations of the ten-sixties were obtained from the Financial Review published by the Commercial and Financial Chronicle; and those for the 5 per cent fifty year bonds from the Manual of Statistics for 1904.

Q. State whether or not that is a recognized authority in respect to such quotations.

A. It is.

Q. Both of them?

A. Both of them.

MR. COLTON: I ask that these be marked for identification.

(The tables referred to were marked for identification Government No. 308-a and Government No. 308-b).

MR. COLTON: I will offer these tables in evidence.

MR. REED: Objected to as incompetent, irrelevant and immaterial.

(The papers so identified were offered in evidence and marked "Government Exhibit Conant No. 308-a and 308-b, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Have you prepared a table showing the highest and

A. quotations of the United States Steel Corporation's

MR. CO nthly, from 1901 to 1905, inclusive?

MR. REED a table was prepared under my direction.

say; and, further the table? (indicating.)

value of the ore is table.

to as irrelevant and

MR. COLTON: I will ask that this be marked for identification.

(The table was marked for identification Government Exhibit No. 309.)

By MR. COLTON:

Q. From what source was that table prepared?

A. From the Financial Review for the years 1905 and 1906.

MR. COLTON: I offer this table in evidence.

MR. REED: Objected to as incompetent, irrelevant and immaterial.

(The paper so identified was offered in evidence and marked "Government Exhibit Conant No. 309, November 22, 1912," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. What was the sum of money paid out by the United States Steel Corporation from April 1st, 1901, to December 31, 1907, for ore properties?

A. I would like to refresh my recollection. About $19,000,000 for the ore and ore leases, as distinguished from other ore property.

MR. REED: Will you show the source of information?

A. (Continuing.) The list does not include improvements.

MR. COLTON: (Addressing Mr. Reed) Yes, I will in a moment.

By MR. COLTON:

Q. Do you understand that to include the entire amount of ore thus acquired by the United States Steel Corporation during those years?

A. I understand it includes the capital expenditures on all ore properties acquired during those years.

Q. Does it or not include the ore acquired through the acquisition of the Union Steel Company?

A. It does.

Q. Have you the information at hand?

A. I think so.

Q. Is there any other item there that you are excluding, such as timber?

A. Yes; timber is excluded.

Q. What items are excluded in that answer? I mean connected with ore properties?

A. These figures do not include the mine plant or additions to such plant, nor the timber property, nor sundry real estate.

Q. How do you get the $19,000,000?

A. Except as to the Union, Sharon and Clairton, it is based on information furnished in a letter showing the total of $9,623,541.50 for ore fees, leases and exploration expenses during the period April, 1901, to the close of 1907, and the allotted cost of the Union, Sharon, and Clairton ores as distributed by the corporation, less an approximated allowance for the improvements, made by the Bureau, was $9,644,574, making a total which I roughly called $19,000,000.

Q. What was the total expenditure of the United States Steel Corporation from April, 1901, to the close of 1907, upon ore property?

MR. REED: I think he answered that.

(Upon request the pending question was repeated by the stenographer.)

By MR. COLTON:

Q. (Continuing.) I understood that in the last answer you confined that to ore as distinguished from acquisition of ore properties for improvements?

A. I understand the question now. Your question covers improvements, timber—

Q. Yes, timber and improvements.

A. Down to the close of 1907?

Q. Down to the close of 1907.

A. It would be a question of memory.

(Upon request the stenographer read the last four questions and answers.)

By MR. COLTON:

Q. Timber and stripping, improvements and betterments for mining properties?

A. Based on the information furnished by the Corporation, the Bureau reached a total of approximately $38,600,000.

Q. Down to 1907?

A. Yes, down through 1907.

Q. What were the percentages of the Tennessee Coal, Iron & Railroad Company's pig iron production, to the total production of the United States, from 1907 to 1910, inclusive?

MR. REED: That is objected to because the witness has not been shown to be competent to testify on that matter.

By MR. COLTON:

Q. Have you the information?

A. We have such percentages furnished by the Corporation in the regular course of this work.

Q. Will you give the percentages?

MR. REED: The question is limited, now, only to pig iron?

MR. COLTON: That is all.

THE WITNESS: I find that the percentages as thus furnished by the Corporation are as follows:

For 1907	2.3
For 1908	3.2
For 1909	2.2
For 1910	2.8

By MR. COLTON:

Q. In what connection was that information furnished?

A. In the regular course of the Bureau's investigation of the steel industry.

Q. Did the United States Steel Corporation furnish you with an estimated value of its manufacturing properties as of the date January 1, 1908?

A. It furnished the Bureau such an estimate.

Q. Can you give me that estimate or appraisement?

A. I should refresh my memory. It is about $382,000,000. I have some memoranda on that at hand, if I may refer to it.

MR. REED: I object to that, on the ground that the statement itself is the best evidence of the appraisement. You have it here?

THE WITNESS: That statement is submitted in detail, subject to the restriction noted in the earlier case.

By MR. COLTON:

Q. But on the different items of information you are not subject to restriction?

A. Not as to groups of different kinds of property. Those are published in the report.

Q. Is there any restriction as to the publication of the figures for groups of property?

A. None.

Q. I renew my question as to whether the United States Steel Corporation has furnished you an estimate of the value of its manufacturing properties, as of the date of January 1, 1908, and as to what amount that is, exclusive of the Tennessee Coal, Iron & Railroad Company and the expenditures on the Gary plant.

A. Such appraisal was furnished to the Bureau, and it shows, for the manufacturing properties, a total of $382,316,021.

Q. What does it show as to capital additions from April 1, 1901 to December 31, 1907, in respect to said manufacturing properties?

A. That statement does not show such additions. Those additions were furnished by the Corporation in the regular course of the work.

Q. Can you give that?

A. Yes. I find the total of the gross additions from April 1, 1901 to December 31, 1907 of those manufacturing properties was $118,269,961.

Q. Was there any accrued depreciation estimated on those properties between April 1, 1901 and December 31, 1907, inclusive?

A. There was.

Q. What was that?

MR. REED: Estimated by the Corporation, you mean?

MR. COLTON: Yes; estimated by the Corporation, I mean.

By MR. COLTON:

Q. What was it?

A. Estimated by the Corporation, in consultation with us. It amounted to $3,828,821.

Q. Is that depreciation net or is it gross?

A. That is an accrued or net outstanding depreciation which had not been made good by the expenditure of funds on the property.

Q. What were the net current assets of the United States Steel Corporation as of the date April 1, 1901?

A. As furnished by the Corporation, those net current assets were $134,224,089.

Q. Was there any item in the valuation as of January 1, 1908, known as "Sundry adjustments"?

A. That would not appear, as I recall, on the face of the appraisal sheets. That is an item that comes about in adjusting the accounts from one year to another. That would be derived from the usual work of the Bureau in dealing with these accounts.

Q. In dealing with different accounts furnished, the adjustment was not furnished by the Corporation itself?

A. They were gone over with the Corporation, and accepted by the Corporation.

Q. Then you may give the sundry adjustments.

A. The sundry adjustments, at the close of 1907, amounted to $2,017,733.

Q. Under "Miscellaneous fixed property," what estimate was given as to the value of the property of the Corporation, as of January 1, 1908?

A. The total of the items included there, according to my memorandum, is $19,665,442.

Q. Is that what was furnished by the Corporation?

A. Yes; furnished by the Corporation.

Q. Was there anything put in as to the gross additions between April 1, 1901 and December 31, 1907?

A. Yes; I have a total of gross additions of $4,581,841.

Q. Did the Corporation furnish any estimate as of that date for its transportation properties?

A. It did.

Q. Will you give that?

A. The total as furnished, was a little over $164,000,000;

but after making a deduction for a minority interest in the Pittsburgh, Bessemer & Lake Erie Railroad, it was a total of $151,237,776.

Q. That minority interest being not owned by the United States Steel Corporation?

A. Not being owned by the United States Steel Corporation.

Q. Does the statement of the value of the transportation properties represent the value of the United States Steel Corporation's equities in said properties?

A. That is not my understanding.

Q. It is the value of the properties themselves?

A. The values as given in the appraisal.

Q. The gross value?

A. Yes.

Q. What did the Corporation's figure include?

A. The Corporation's valuation shows that the valuation for the properties, except equipment, is $98,614,450, and a valuation for the equipment of $65,789,525. That makes a total of——

Q. If that is everything, we can figure out the total. Is that everything?

A. Yes.

MR. REED: Mr. Conant did not mean that the Corporation had represented the value of the property to be more than the Bureau allowed, but that, in order to ascertain the value of the Corporation's equity, it was necessary to deduct something from the total valuation of the property itself, to account for the minority stock ownership in the Bessemer & Lake Erie Railroad. Is that correct, Mr. Conant?

THE WITNESS: The latter part of it, yes. I would not want to be understood as assenting to or accepting your valuation of the railroad property otherwise. But that was the reason.

MR. COLTON: If that answer goes in in that way, I do not object to your form of statement.

MR. REED: Mr. Conant neither dissents nor assents.

MR. COLTON: Yes.

MR. REED (Continuing). It is the Corporation's estimate of the value of the property.

MR. COLTON: Yes. We are just proving the Corporation's estimate there.

MR. REED: I wanted it clear that he was not reflecting upon it by making the deduction.

By MR. COLTON:

Q. What were the capital additions, as given by the Corporation, to its transportation properties from April 1901, to December 31, 1907?

A. My memorandum shows $48,926,124.

Q. You are stating what was furnished by the Corporation?

A. Yes; what was furnished by the Corporation as the gross capital additions—$48,926,124. This, of course, was before any allowance for accrued depreciation.

Q. What was allowed for accrued depreciation during that period?

A. $13,412,569.

MR. REED: Is that net depreciation?

THE WITNESS: Net accrued or net outstanding depreciation.

MR. REED: Not made good by replacement or repair?

THE WITNESS: No.

By MR. COLTON:

Q. What was the net outstanding accrued depreciation of the miscellaneous fixed property as furnished by the Corporation?

A. $2,345,043.

Q. Is that net accrued depreciation reckoned from April 1, 1901, in each case?

A. It is; to the close of December 31, 1907.

Q. What was the estimated value of the United States Steel Corporation's coal and coke properties, as estimated by the Corporation as of January 1, 1908?

A. As furnished to the Bureau, the total is $143,063,094.

Q. What were the gross capital additions to said prop-

erties from April 1, 1901, to December 31, 1907, as given by the United States Steel Corporation?

A. $25,588,128.

Q. What was the net accrued depreciation from April 1, 1901, to December 31, 1907, in respect to said coal and coke properties?

A. $10,030,923.

Q. As given by the United States Steel Corporation?

A. Yes, sir; as furnished by the Corporation to the Bureau.

Q. Was there anything given under the item of sinking funds?

A. I do not think that was included in the appraisal. We have a sinking fund item in the 1901 balance sheet.

Q. How much is that?

A. $239.

Q. Was there anything given, at any time, by the Corporation, whether in that 1901 balance sheet or elsewhere, under the head of "Investments?"

A. There are a great many figures on investments, Mr. Colton.

Q. Limit it, then, to 1901.

A. The investments, in April, 1901, were reported as $241,030.

Q. Was any item given in 1901 to deferred charges to operation?

A. The item as given for 1901 was $2,088,027.

Q. Do the properties named above in your answers, namely, manufacturing property, coal and coke property, transportation property, miscellaneous fixed property, cover all the properties whose value was estimated by the United States Steel Corporation, and furnished to you, other than ore and ore improvements?

A. Except for the Tennessee Coal & Iron, and the expenditures on the Gary plant which I think were reported separately, and for the current miscellaneous assets which came in otherwise than on this appraisal.

Q. Those that we have just referred to above?

A. Similar to those. The same for that year.

Q. The same for the year 1901?

A. As I have given, yes. We also got them for other years.

Q. Did that estimate purport to cover the entire properties of the United States Steel Corporation, itemized and then summarized?

A. Certainly. That is my understanding.

Q. And you have given the summaries in respect to all properties except ore?

A. I have.

Q. In every case you have given the estimate as given by the Corporation, and not the estimate that the Bureau of Corporations put on the properties; is that correct?

A. Yes. They are the Corporation's estimates; not ours.

MR. COLTON: You may cross examine.

(Thereupon, a recess was taken until 2:15 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess, the hearing was resumed.

LUTHER CONANT, JR.,

the witness under examination at the taking of recess, resumed the stand for further

DIRECT EXAMINATION,

By MR. COLTON:

Q. I will ask you to identify this document (handing document to witness).

A. This is Part 1 of the Commissioner of Corporations' report on the steel industry. This part relates to the organization, investment, profits and position of the United States Steel Corporation. This is Part 1 of the report of the Bureau on its investigation.

MR. COLTON: I offer the report in evidence, and will state

that the Bureau of Corporations has been kind enough to furnish us with 50 copies of this report, and it will be unnecessary to have it printed unless counsel for the Steel Corporation desires it.

MR. REED: The offer is objected to, because, as appears from the testimony of this witness and the preceding witnesses, it is based, in part at least, upon hearsay, and is therefore incompetent. It is further objected to because nothing in the law creating and regulating the Bureau of Corporations makes its reports or conclusions competent evidence.

MR. COLTON: The law, of course, will speak for itself.

MR. REED: Yes, but our reason for the objection does not speak for itself.

It is further objected to for the reason that it contains discussions which are not evidential and conclusions and findings which are not competent evidence or binding upon or evidential against the defendants, or any of them.

(The document so offered and identified was thereupon marked Government Exhibit Conant No. 310, November 22, 1912.)

MR. COLTON: That is all.

CROSS EXAMINATION,

By MR. REED:

Q. Mr. Conant, you have testified to the percentage of the pig iron production of the United States that was produced by the Tennessee Coal, Iron & Railroad Company in the year 1907, as shown by the file of your Bureau No. 2649-6, I notice.

MR. COLTON: What is that file?

MR. REED: That is the file from which the witness read his statement.

By MR. REED:

Q. I notice as a part of the same file a statement purporting to show the production of all kinds of steel ingots and steel castings in the United States. Was that furnished to your Bureau at the same time and in the same way as

the statement of iron production from which you read this morning?

A. I would have to have the correspondence to testify absolutely. Apparently it was not furnished at the same time. I notice a different record number on the sheet you have called my attention to, from that on the sheet as to which I testified this morning. There is quite a difference in the numbers, and it would indicate some lapse of time, I should say, although possibly it was the same date.

Q. Was it furnished in the same way, upon the request of your Bureau?

A. It is my very definite recollection that it was.

Q. And as part of your investigation of the Steel Corporation?

A. Yes, sir.

Q. What percentage of the steel production of the United States was produced by the Tennessee Coal, Iron & Railroad Company in 1907?

MR. COLTON: I object to that, unless it is made to refer to what percentage was furnished by a document by the United States Steel Corporation.

MR. REED: He has testified that that is the way the document was furnished. Please answer the question.

THE WITNESS: This statement shows one per cent.

By MR. REED:

Q. You went into the Bureau of Corporations as an investigator in 1904, I believe?

A. In December, 1904.

Q. Who was the Commissioner of Corporations at that time?

A. Mr. James Rudolph Garfield.

Q. How long did he continue to be Commissioner of Corporations?

A. I think until about the end of February, 1907, possibly the 1st of March, or the early days of March.

Q. He was succeeded by Mr. Herbert Knox Smith, was he?

A. He was.

Q. And Mr. Smith remained in office until last April, I believe, when you became Commissioner?

A. Last July was the date of his resignation, and I was not appointed until the following month.

Q. When did the investigation into the United States Steel Corporation commence?

A. I can not testify absolutely as to that, because I was not engaged in the investigation in the early years. I think in the early part of 1905.

Q. It was under Commissioner Garfield?

A. Yes, sir.

Q. And it continued from 1905 until the present time?

A. Yes, sir.

Q. And is still continuing?

A. We still have some work on hand.

Q. What has been the principal source of the material used by the Bureau of Corporations in its investigation?

A. In the main, the large steel concerns, including, of course, the United States Steel Corporation; to some extent information obtained from some of the smaller concerns; and, of course, periodicals like the Iron Age. Reliable authorities in the trade have been consulted.

Q. A very large quantity of information has been furnished by the United States Steel Corporation itself, has it not?

A. It has.

Q. And that has been the case ever since the investigation started, in 1905, has it not?

A. Information has been furnished from time to time ever since then. I think we have not called for any information very recently.

Q. Can you give us any measure of the quantity of the information that has been furnished by the Steel Corporation, either in number of pages or weight or bulk?

A. I could not. I had nothing to do with the investigation up to December, 1908. A large part of the matter related to matters that I was not at all familiar with.

Q. You know, do you not, that upwards of a carload of documents have been furnished by the United States Steel Corporation at the request of the Bureau of Corporations?

A. I certainly do not know that.

Q. The Steel Corporation has always furnished information asked by the Bureau whenever it was possible, has it not, so far as you know?

A. I hardly think so. It has not furnished it very promptly on many occasions, and not all has been furnished that has been asked for, no, sir.

Q. A very large proportion of what has been asked for has been furnished?

A. Confining my answer to the requests I know of personally, I would say yes.

Q. And where the information was not furnished, do you know that it was possible to furnish it?

A. We have some unfinished matters on hand that have not yet been—

Q. (Interposing) What are they?

A. Well, they cover quite a variety; as, for instance, the tonnage of the estimated ore of the Oliver Iron Mining Company, corresponding to the one of the Lake Superior Consolidated Iron Mines, which was introduced in evidence this morning; some financial data as to the Carnegie Steel Company; and, off hand,—it is a little difficult to state in detail,—but there is a considerable amount of material requested and not yet furnished.

MR. LINDABURY: That request came after the suit was brought, did it not?

THE WITNESS: Not that I have in mind; I have no such request in mind.

By MR. REED:

Q. Do you know whether it is possible to furnish such information as has been asked for and not furnished?

A. I think the correspondence indicates that it was the understanding of the Corporation that it would be possible but it has not yet been furnished.

Q. Compared with the total quantity that has been furnished that is very small in amount, is it not?

A. I would say it is small.

Q. What was the first criticism of the Steel Corporation published by the Bureau of Corporations?

A. The first criticism?

Q. Yes, either favorable or unfavorable?

A. Except for certain tariff statistics submitted in December, 1908, I think the first publication by the Bureau was a summary of Part I, which was issued for release to the newspapers July 1st, 1911. That is my recollection.

Q. This tariff material that you spoke of contained no criticism of the methods of the Steel Corporation, did it?

A. I think not. I had nothing to do with the preparation of that.

MR. REED: That is all.

(Witness excused).

(Thereupon the further hearing of this cause was adjourned subject to notice).

THIRTY-SIXTH DAY.

Offices of the American Iron and Steel Association,

Philadelphia, Pennsylvania,
Tuesday, December 17, 1912.

The hearing was resumed at 10 o'clock A. M. before Special Examiner Henry P. Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the defendant, Mr. Severance, Mr. Bolling and Mr. Reed.

WILLIAM G. GRAY,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Colton:

Q. Mr. Gray, what is your occupation?

A. I am a statistician of the American Iron and Steel Association.

Q. How long have you been engaged in that work?

A. I became connected with the Association in 1887, and acted as correspondent down stairs with Mr. Swank until 1893, when I took charge of the statistical work, and in 1901 I was made statistician.

Q. Have you had general charge of the work since 1895 or 1896?

A. Since about 1893.

Q. What is the general function of the American Iron and Steel Association?

A. It collects the statistics of the production of pig iron, steel ingots and castings, rolled iron and steel, tin plates, and then issues a directory to the iron and steel works of the United States.

Q. What does it do with the production?

A. It publishes it in an annual report.

Q. How is the statistical department of the American Iron and Steel Association supported?

A. By the voluntary contributions of the manufacturers.

Q. Are they members of the American Iron and Steel Association?

A. A great many of them are.

Q. State whether or not the reports are obtained direct from the manufacturers.

A. Yes; they are obtained direct from the manufacturers.

Q. And are they obtained for the purpose of being published in the directories and in the annual reports of the American Iron and Steel Association?

A. Yes, sir.

Q. They are furnished for that purpose?

A. They furnish them for publication.

Q. I ask that the table appearing on page 65 of the work entitled "Annual Statistical Report of the American Iron and Steel Association containing complete statistics of the iron and steel industries of the United States for 1902 and immediately preceding years," be marked for identification.

(The table referred to was marked "Government Exhibit No. 312, for identification.)

Q. Look at the table appearing on page 65 of that report and entitled "Statistics of the United States Steel Corporation, iron ore shipments and production in the calendar year 1901, gross tons; iron and steel actually produced in the calendar year 1901, gross tons"; and state the manner in which that table was prepared, and upon what sources of information it is based.

A. The shipments of iron ore from the Lake Superior region in 1901 were obtained from the *Iron Trade Review* of Cleveland, Ohio.

The shipments of iron ore from the Lake Superior Region by the United States Steel Corporation were obtained from the Corporation.

The shipments of iron ore from the Lake Superior Region in 1901 by Independent Companies were obtained by deduct-

ing from the total shipments the shipments of the U. S. Steel Corporation.

The production of iron ore in the whole country in 1901 was obtained from the U. S. Geological Survey at Washington.

The production of iron ore in the whole country by the Corporation in 1901 was obtained from the Corporation.

The production of iron ore by the Independents in 1901 was obtained by deducting from the total production the production reported by the U. S. Steel Corporation.

The total production of pig iron, steel ingots, and castings, rolled iron and steel, and wire nails in the whole country was obtained from the iron and steel manufacturers of the country direct by the American Iron and Steel Association.

The production of these products by the U. S. Steel Corporation was obtained from the constituent companies of the Corporation by the American Iron and Steel Association.

The production of the same products by the Independents was obtained direct from the Independent companies.

Q. Was the United States Steel Corporation a member of the American Iron and Steel Association in 1901?

A. I think so. I do not know positively.

Q. How about the subsidiary companies of the United States Steel Corporation?

A. Some of them were. That is a matter that really does not come under me personally, at all. That would come under the financial end. I think, however, that I am safe in saying that almost all the constituent companies were members of the Association at that time.

Q. Is Mr. Andrew Wheeler the man who would know?

A. Mr. Andrew Wheeler would not know.

Q. Who would know?

A. Mr. Swank would know.

Q. All right.

A. The books would show it.

Q. In respect to the several products named, does the table cover the entire United States?

A. It does.

MR. COLTON: I offer said table in evidence.

(The table referred to was thereupon marked "Government Exhibit Gray No. 312, December 17, 1912.")

MR. SEVERANCE: We object to the table offered, in so far as it embodies any figures other than those furnished by any of the defendants in this action, on the ground that statements obtained from other parties, which are the basis of the figures as stated by the witness, are hearsay.

By MR. COLTON:

Q. These statements furnished by the independent companies are furnished direct by them?

A. Yes, sir.

MR. COLTON: I ask that the table appearing on page 77 of the work entitled "Annual Statistical Report of the American Iron and Steel Association, containing complete statistics of the iron and steel industries of the United States for 1905 and immediately preceding years" be marked for identification.

(The table referred to was thereupon marked "Government Exhibit No. 313, for identification.)

By MR. COLTON:

Q. Mr. Gray, I ask you to look at the table appearing on page 77 of the report, and entitled "Statistics of the United States Steel Corporation for the calendar year 1902; iron ore shipments from Lake Superior, and the total iron ore production in the calendar year 1902; iron and steel actually produced in the calendar year 1902, also total coke production in the same year, gross tons"; and state the manner in which that table was prepared and upon what sources of information it is based.

A. It was prepared in about the same manner as the table for 1901, except that we have here inserted the production of coke. The production of coke did not appear, I think, in the table for 1901. The coke production was obtained from the United States Geological Survey for the whole country, and from the Corporation for its output.

Q. As regards the rolled iron and steel products, how were they obtained?

A. In the same way, directly from the constituent companies of the Corporation, and from the independents.

Q. After the production of products was obtained from the constituent companies, was it sent to the United States Steel Corporation for verification?

A. Not always. In some later years, but I question whether these earlier years were so sent.

Q. Would your records show when the custom of sending it to the United States Steel Corporation for verification began?

A. They might, in some instances. We could go back, perhaps, and ascertain just about what year we began to do that.

Q. In other respects, the table was prepared in the same manner as the preceding one?

A. In the same manner as the table for 1901, yes.

Q. Are these published annual statistical reports furnished to the United States Steel Corporation, among the other manufacturers?

A. They are sent to every member of the Association.

Q. Including the United States Steel Corporation?

A. Including the United States Steel Corporation.

Q. Does that table cover, in respect to the several products therein named, the entire United States?

A. It does.

MR. COLTON: I offer such table in evidence.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 313, December 17, 1912.)

MR. SEVERANCE: I make the same objection that was recorded in regard to the table for 1901, without repeating it.

MR. COLTON: I ask that the table appearing on page 78 of said work for 1905 be marked for identification.

(The table referred to was marked "Government Exhibit No. 314, for identification.)

By MR. COLTON:

Q. I ask you to look at the table on page 78 of said report for 1905, and entitled "Statistics of the United States Steel Corporation for the calendar year 1903; iron ore shipments from Lake Superior and total iron ore production in the cal-

endar year 1903; iron and steel actually produced in the year 1903; gross tons"; and state the manner in which said table was prepared, and upon what sources of information it is based.

A. Exactly in the same manner as the table for 1902.

Q. And in respect to the products therein named, it covers the entire United States?

A. Yes, sir.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection as to the preceding table.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 314, December 17, 1912.")

MR. COLTON: I ask that the table appearing on page 79 of said work for 1905 be marked for identification.

(The table referred to was thereupon marked "Government Exhibit No. 315, for identification.")

By MR. COLTON:

Q. I ask you to look at the table appearing on page 79 of said report for 1905, entitled "Statistics of the United States Steel Corporation for the calendar year 1904; iron ore shipments from Lake Superior, and the total iron ore production in the calendar year 1904; iron and steel actually produced in the calendar year 1904, gross tons"; and state the manner in which said table was prepared, and upon what sources of information it is based.

A. In the same manner as the table for 1903, and from the same sources of information.

Q. And in respect to the several products therein named, did it cover the entire United States?

A. Yes, sir.

MR. COLTON: I offer the said table in evidence.

MR. SEVERANCE: I make the same objection as to the preceding tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 315-316, December 17, 1912.")

By MR. COLTON:

Q. Mr. Gray, I ask you to look at the table appearing on page 81 of the annual statistical report of the American Iron and Steel Association, containing complete statistics of the iron and steel industries of the United States for 1906 and immediately preceding years, said table being entitled "Iron ore shipments from Lake Superior and the total iron ore production in the calendar year 1905, also coke production in the same year; iron and steel actually produced in the calendar year 1905, gross tons; statistics of the United States Steel Corporation for the calendar year 1905"; and state the manner in which said table was prepared, and upon what sources of information it is based.

A. It was prepared in the same manner, and from the same sources of information as the table for 1902.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection as to the preceding tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 317, December 17, 1912.")

MR. COLTON: I ask that the table appearing on page 82 of the annual statistical report of the American Iron and Steel Association for 1906 and immediately preceding years, be marked for identification.

(The table referred to was marked "Government Exhibit No. 318, for identification.")

By MR. COLTON:

Q. The table just referred to is entitled "Statistics of the United States Steel Corporation for the calendar year 1906; iron ore shipments from Lake Superior, and the total iron ore production in the calendar year 1906; also coke production in the same year; iron and steel actually produced in the calendar year 1906, gross tons." State the manner in which said table was prepared.

A. In the same manner, and from the same sources of information as the table for 1902.

Q. In respect to the several products therein named, does it cover the entire United States?

A. It does.

Q. That is true of all of these tables?

A. That is true of all the previous tables, as well.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection as to the preceding tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 318, December 17, 1912.")

By MR. COLTON:

Q. I ask you to look at the table appearing on page 87 of the annual statistical report of the American Iron and Steel Association for the year 1907, said table being entitled "Statistics of the United States Steel Corporation for the calendar year 1907; iron ore shipments from Lake Superior and total iron ore production in the calendar year 1907; iron and steel actually produced in the calendar year 1907; gross tons;" and state the manner in which said table was prepared, and upon what sources of information it is based.

A. It was prepared in the same manner and from the same sources of information as the previous tables.

Q. Do you know whether at that time you had begun the practice of having these tables verified by Mr. Filbert, so far as they applied to the United States Steel Corporation?

A. I could not say just when that was.

Q. In respect to the several products named, that covers the entire Unites States?

A. Yes.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection as to the other tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 319, December 17, 1912.")

MR. COLTON: I ask that the table appearing on page 94 of the work entitled "Annual Statistical Report of the American Iron and Steel Association, containing complete statistics of the iron and steel industries of the United States for 1909," be marked for identification.

(The table referred to was marked "Government Exhibit No. 320, for identification.")

By MR. COLTON:

Q. The table referred to is entitled "Statistics of the United States Steel Corporation for the calendar year 1908; iron ore shipments from Lake Superior and the total iron ore production in the calendar year 1908; also coke production in the same year; iron and steel actually produced in the calendar year 1908, gross tons." State the manner in which said table was prepared.

A. In exactly the same manner as the previous tables.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection as to the other tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 320, December 17, 1912.")

By MR. COLTON:

Q. Does that table cover the entire United States in respect to the several products therein named?

A. It does.

MR. COLTON: I ask that the table appearing on page 99 of the work entitled "Annual Statistical Report of the American Iron and Steel Association, containing complete statistics of the iron and steel industries of the United States for 1910 and immediately preceding years," be marked for identification.

(The table referred to was marked "Government Exhibit No. 321, for identification.")

By MR. COLTON:

Q. Mr. Gray, I ask you to look at the table appearing on page 99 of said work, and entitled "Percentage of production of the United States Steel Corporation for 1909; iron ore shipments from Lake Superior and the total iron ore production in 1909; iron and steel actually produced in the calendar year 1909, gross tons;" and state the manner in which said table was prepared, and from what sources of information.

A. In the same manner and from the same sources as the previous tables.

Q. In respect to the several products therein named, it covers the entire United States?

A. It does; yes, sir.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE. I make the same objection as that made to the previous tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 321, December 17, 1912.")

By MR. COLTON:

Q. I ask you to look at the table appearing on page 100 of said work, and entitled "Percentage of production of the United States Steel Corporation for 1910; iron ore shipments from Lake Superior, and the iron ore production in 1910; iron and steel actually produced in the year 1910, gross tons;" and state the manner in which said table was prepared, and upon what sources of information it is based.

A. In the same manner and from the same sources of information as the previous tables.

Q. In respect to the several products therein named, it covers the entire United States?

A. Yes, sir.

MR. COLTON: I offer the said table in evidence.

MR. SEVERANCE: I make the same objection as to the other tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 322, December 17, 1912.")

By MR. COLTON:

Q. Mr. Gray, are the figures of production collected by the American Iron and Steel Association generally considered an authority in the iron and steel trade?

A. Yes, sir.

Q. Mr. Gray, did you prepare, at the request of the Department of Justice, a table covering the iron and steel statistics for 1898, 1899 and 1900?

A. Yes, sir.

Q. Have you that table at hand?

A. Yes, sir.

MR. COLTON: I ask that the table entitled "Iron and steel statistics for 1898, 1899 and 1900," together with the introductory words on said table beginning with the words "The following table gives the production of pig iron," and ending with the words "by the Corporation;" also the note at the close of the table: "In the above statement the production of the Tennessee Coal, Iron & Railroad Company is not included in column 2, but is included in column 3; the percentages of the company are included in column 6" be marked for identification.

(The papers referred to were thereupon marked "Government Exhibit No. 323, for identification.")

By MR. COLTON:

Q. Mr. Gray, I show you a paper entitled "Iron and steel statistics for 1898, 1899 and 1900" and ask you to state the manner in which said table was prepared, and the sources upon which it is based. I refer to the paper which has just been marked "Government Exhibit No. 323 for identification."

A. This table was compiled from reports of production received from the companies which operated blast furnaces, steel works, rolling mills and wire nail plants in the three years named, which were then owned or operated, or which were subsequently acquired by the subsidiary companies of the United States Steel Corporation, not including the production of the plants owned or operated by the Tennessee Coal, Iron & Railroad Company; also from all plants that were not acquired by the Corporation.

Q. But who had made returns in the way you have already testified, to the American Iron and Steel Association?

A. Yes; from which returns had been received by the American Iron and Steel Association.

Q. And for the purpose of publication as statistics?

A. Yes.

Q. In respect to the several products therein named, does the table cover the entire United States?

A. It does.

Q. Referring to column 2 of the table, state whether or

not the production of plants acquired by the United States Steel Corporation includes the production of any plant acquired subsequently to January 1, 1902?

A. To the best of my knowledge and belief, it does not.

Q. What is your knowledge and belief based on?

A. I have gone over the thing very carefully, but it was rather an intricate proposition; we have examined our directories and all our returns, and I feel satisfied that the production of any plant acquired by the Corporation after 1902 is not included in that statement.

MR. SEVERANCE: That is in column 2?

THE WITNESS: Yes.

MR. COLTON: I offer the said table in evidence.

MR. SEVERANCE: I make the same objection as to the other tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 323, December 17, 1912.")

By MR. COLTON:

Q. Mr. Gray, did you prepare, at the request of the Department of Justice, a table entitled "Comparative production of all kinds of finished rolled iron and steel products by the subsidiary companies of the United States Steel Corporation and by independent companies for 1905 and 1910"?

A. Yes, sir.

Q. Will you produce that table?

(The witness produced a paper, which was marked "Government Exhibit No. 324, for identification.")

By MR. COLTON:

Q. Mr. Gray, I show you said table, which has been marked "Government Exhibit No. 324 for identification," and ask you to state the manner in which said table was prepared, and upon what sources of information it is based.

A. This table was compiled from reports received from the constituent companies of the Corporation, and from reports received from all the independent companies. The total for the Corporation is reached by totaling the reports received from the plants operated by all of its subsidiary companies,

and the total for the independent companies by totaling all the reports received from the independents. This applies to 1905 and 1910, and for each of the products named. The total given for rolled forging blooms and rolled forging billets is, I feel sure, incorrect, as it was the first year of the inquiry, and the reports received from the various plants were not so full and complete as those received for subsequent years.

Q. In respect to the other products, is it correct?

A. It is full and complete there.

Q. In respect to the several products therein named, does the table cover the entire United States?

A. It does; yes, sir.

Q. As to the note appearing at the top of the table; is that correct?

A. Yes, sir.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I understood the witness to say he obtained his information from the same sources as in the cases of the other tables?

THE WITNESS: Yes.

MR. SEVERANCE: I make the same objection as to the other tables.

(The table so offered and identified was thereupon marked "Government Exhibit Gray No. 324, December 17, 1912.")

MR. COLTON: I ask to have marked for identification the work entitled "Directory to the iron and steel works of the United States, published by the American Iron and Steel Association, 14th edition, corrected to April 1, 1898."

(The book referred to was thereupon marked "Government Exhibit No. 325, for identification.")

By MR. COLTON:

Q. Mr. Gray, state the manner in which said work was prepared.

A. The printed descriptions of each plant for blast furnaces and rolling mills and steel works, which appeared in the edition of the directory for 1896, were pasted on special blanks and sent to the owners or operators of the different iron and steel plants, with the request that the descriptions

be corrected to cover the present equipment, products, capacity, etc., of each plant and returned to us as soon as possible. Any changes that our files indicated had been made or were being made in the equipment of the plants, etc., were inquired about. When the descriptions were returned by the manufacturers they were put in type and the proof was submitted to each manufacturer for approval. Few descriptions, if any, were printed in the directory without the O. K. of the operators. If the plant was new and a description had not appeared in the 1896 edition of the directory, a special blank was sent to it, and, when returned, the description was prepared from that and put in type, and proof sent to the company or individual for its or his approval. When the proof was returned, the book was printed. The same plan was followed for each additional book.

Q. And the various matters thus furnished were furnished by the several manufacturers for publication?

A. Yes, sir.

MR. COLTON: I offer said work in evidence. That is the directory for 1898.

MR. SEVERANCE: The supplements will be a separate exhibit?

MR. COLTON: Yes.

MR. SEVERANCE: I object to this book on the ground that, from the statement of the witness detailing the sources of information upon which the statistics therein found are based, it appears that the said statements are hearsay.

(The book referred to was thereupon marked "Government Exhibit No. 325, December 17, 1912.")

MR. COLTON: I ask that the work entitled "Supplement to the Directory to the Iron and Steel Works of the United States, containing a complete list of consolidated iron and steel companies in the United States, compiled by the American Iron & Steel Association, Second Edition, corrected to August 15th, 1900," be marked for identification.

(The book referred to was thereupon marked "Government Exhibit No. 326, for identification.")

Q. Mr. Gray, in what manner was this work prepared, and upon what sources of information was it based?

A. The same general plan was followed as in getting out the directory.

Q. Which you have already described?

A. That I have already described.

MR. COLTON: I offer said supplement in evidence.

MR. SEVERANCE: I object to this on the same ground as that on which I objected to Exhibit No. 325, and on the further ground that it appears from the preface that the same is a second edition, and not the original compilation, but a reprint. On that ground also I object to it as incompetent.

(The book so offered and identified was thereupon marked "Government Exhibit Gray No. 326, December 17, 1912.")

By MR. COLTON:

Q. For what purpose was a reprint made of this work?

A. That was not exactly a reprint. You will find, perhaps, that there are additional companies there described.

Q. You get out supplements from time to time for the use of the members of the Association?

A. Yes, sir.

Q. And corrected to various dates?

A. Yes, sir.

Q. I notice that it is called the directory to the Iron & Steel works, such and such an edition, in each case. What is the reason for that designation of the work?

A. In order to incorporate new companies, or to eliminate old ones that have been dismantled, or abandoned.

Q. You stated that it was not exactly a reprint. In what sense do you mean it was not a reprint?

A. You will find plants described in the second edition that were not described in the first.

Q. It corresponds, then, to the other directories, in that it shows, in addition to plants previously described, other plants?

A. Yes.

MR. SEVERANCE: I object to that as not the best evidence. I desire to suggest on the record to counsel that he offer the first supplement instead of the second edition.

Mr. Colton: No; I offer the supplement, second edition.

I ask that the work entitled "Iron & Steel Works of the United States, 15th Edition, 1901, corrected to December 31, 1901, be marked for identification.

(The book referred to was marked "Government Exhibit No. 327, for identification.")

By Mr. Colton:

Q. Mr. Gray, I will ask you to state the manner in which this was prepared, and upon what sources of information it was based?

A. In the same manner as the directory for 1898.

Mr. Colton: From said work, which has been produced and marked "Government Exhibit for identification No. 327," I offer in evidence the following: Title page; page 1, Arabic numbers, beginning with the words "The Iron & Steel Works of the United States, Part I, chiefly consolidations, corrected to August 31, 1901," through the words on page 69, "J. H. Price, and J. M. B. Reis."

Also, page 79, down through the words on page 80, "Rolled Products, 275,000 tons."

Also, on page 117, beginning with the words "The Sharon Steel Company," through page 118, ending with the words "wrought pipe plant."

Also, from page 223, beginning with the words "Projected —2 stacks: Union Steel Company," through the words "about January 1, 1903," on the same page.

Also, from page 227, beginning with the words "Union Steel Company," through the words on page 228, "R. B. Mellon, Treasurer."

Also, from page 398, beginning with the words "Union Steel Company," through the words on page 399, "the steel department."

That concludes my offer.

Mr. Severance: That is objected to on the same ground as the objection made to Exhibit 325; and on the further ground that counsel fails to offer the entire exhibit, but only

offers isolated extracts. The offer should include the whole exhibit, if any part of the same.

MR. COLTON: I offered from the work those parts that cover the United States Steel Corporation, and did not offer the rest for the reason that I did not care to encumber the record with them.

MR. SEVERANCE: Is that testimony?

MR. COLTON: That is just an explanation in reply to your objection.

(The extracts so offered and identified were thereupon marked "Government Exhibit Gray No. 327, December 17, 1912.")

MR. COLTON: I ask to have marked for identification the work entitled "Directory to the Iron and Steel Companies of the United States, compiled by the American Iron & Steel Association, corrected to November, 1889, with addenda."

(The book referred to was marked "Government Exhibit No. 328, for identification.")

Q. In what manner was said work prepared?

A. In the same manner that the directory for 1898 was prepared.

MR. COLTON: From said work I offer in evidence the following: From page 26, beginning with the words "Lucy Furnaces, Carnegie, Phipps & Company," through the words on page 27, "James Scott, Superintendent."

Also, from page 26, beginning with the words "Edgar Thomson furnaces," through the words "James Gayley, Superintendent of furnaces."

From page 58, beginning with the words "Illinois Steel Company," through the words on page 59, "See rolling mills in Illinois and Wisconsin."

From page 63, beginning with the words "Illinois Steel Company," through the words on page 64, "see rolling mills. in Illinois and Wisconsin."

From page 116, beginning with the words "Allegheny Bessemer Steel Company," through the words "F. G. Gorham, Mills Building, New York."

From page 118, beginning with the words "Carnegie,

Phipps & Company Limited," through the words on page 119, "William P. Palmer, General Sales Agent."

From page 120, beginning with the words "Edgar Thomson Steel Works," through the words "Charles M. Schwab, General Superintendent."

From page 159, beginning with the words "Illinois Steel Company," through the words on page 161, "See furnaces and rolling mills in Wisconsin."

From page 161, beginning with the words "Illinois Steel Company," through the words "See furnaces and rolling mills in Illinois."

MR. SEVERANCE: I make the same objection to this offer as to the last preceding offer, and as to the offer of certain particular portions of Exhibit 327.

(The extracts so offered and identified were thereupon marked "Government Exhibit Gray No. 328, December 17, 1912.")

By MR. COLTON:

Q. Mr. Gray, I show you a table entitled "Comparative production of all kinds of finished rolled iron and steel by subsidiary companies of the United States Steel Corporation and by independent companies in 1906," together with note: "The production of the Tennessee Coal, Iron & Railroad Company is included with the production of independent companies for the year 1906," and ask you to state the manner in which said table was prepared.

A. In the same manner as the table for 1905 was prepared.

Q. Based on the same information?

A. Based on the same information.

Q. On the same character of information.

A. Same sources of information.

MR. COLTON: I ask that the said table be marked for identification.

(The table referred to was marked "Government Exhibit No. 329, for identification.")

Q. In respect to the several products therein named, does it cover the entire United States?

A. Yes, sir.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I object to that on the same ground as the objection made to Exhibit No. 324.

By MR. COLTON:

Q. And the table was prepared in the same manner as Exhibit No. 324?

A. Yes.

(The table so offered and identified was thereupon marked "Government Exhibit No. 329, December 17, 1912.")

MR. COLTON: I ask that the tables appearing on page 58 of the work entitled "Annual Statistical Report of the American Iron & Steel Association, containing complete statistics of the iron and steel industries of the United States for 1910, and immediately preceding years," together with paragraphs describing said tables on pages 58 and 59 of said report, beginning on page 58 with the words "production of pig iron by grades," and ending on page 59 with the words "Ferro silicon, Bessemer ferro-silicon, and high silicon pig iron are included in the foundry figures given in the table," be marked for identification.

(The tables referred to were marked "Government Exhibit No. 330, for identification.")

MR. SEVERANCE: Which exhibit number is this 1910 report?

MR. COLTON: It is not the 1910 report; it is the tables appearing on those pages which I have asked to have marked.

MR. SEVERANCE: "The statistics for the iron and steel trade in 1910"; that is what it is headed.

By MR. COLTON:

Q. State the manner in which said tables were prepared and upon what sources of information they were based.

A. The statstical reports were received from all the blast furnaces in the country, and were tabulated by grades, and the results embodied in these tables.

Q. And they were sent to you by the various companies in the same manner that the steel companies' figures were?

A. In exactly the same manner.

Q. And for the same purpose?

A. And for the same purpose, for publication.

MR. COLTON: I offer the said tables, together with the introductory and descriptive words attached thereto, as described in Government Exhibit for identification 330, in evidence.

MR. SEVERANCE: I object to these tables as hearsay and as immaterial.

(The tables referred to were received in evidence and marked "Government Exhibit No. 330," and will be found in the volume of exhibits.)

By MR. COLTON:

Q. Among the companies there reporting did the United States Steel Corporation report its production of the several grades therein named?

A. Its constituent companies did.

Q. In respect to the several products therein named, does the table cover the entire United States?

A. Yes, sir.

Q. Mr. Gray, referring to the tables appearing on page 58, and marked "Government Exhibit No. 330," the annual report for 1910, have you any returns or other data showing the total production of the various subsidiaries of the United States Steel Corporation of pig iron by grades corresponding to the several grades named in said table for the years 1905, 1909, and 1910, respectively, or for any of said years?

A. We do not have the total for the companies; no, sir.

Q. Have you any returns or other data showing the total production of pig iron by the various subsidiary companies of the United States Steel Corporation, or of one or more of the grades specified in the tables appearing on page 58 of the said report, marked "Government Exhibit No. 330?"

A. Not for the companies, no, sir.

Q. For the years, 1905, 1909, and 1910, respectively or for any of said years?

A. No.

Q. Mr. Gray, how are the returns made by the various steel companies of the United States on the various pig iron companies of the United States as to the production of pig iron by grades, kept in your files?

A. We keep them usually in folders.

Q. In folders by what?

A. By numbers. Each company has its number and the folder is numbered, and the returns received from that company are placed in this folder.

Q. The returns for several years will appear in a single folder?

A. No. Just the returns for a single year, or for the half year, as the case may be.

Q. So it would be necessary to go to the folders to get the statistics for a given company?

A. Yes, sir; to the folder or to the books.

Q. In the book does it appear for several years in respect to a single company?

A. In some. One book covers some four or five years, and in other cases we have just had one book for each year.

By Mr. Colton:

Q. Referring to the table on page 58, in respect to the several grades of pig iron therein named, does it cover the entire United States?

A. Yes.

Mr. Colton: I offer for identification the table appearing on page 81 of the work entitled "Annual Report of the American Iron & Steel Association, containing complete statistics of the iron and steel industry of the United States for 1910, and immediately preceding years," together with the introductory words, "The following table gives the production of iron and steel plates and sheets since 1905."

(The table referred to was marked "Government Exhibit No. 331, for identification.")

Q. State the manner in which said statement was prepared, and upon what sources of information it was based.

A. It was prepared exactly as the other tables were prepared, from reports received from the various plants in the country, and the figures cover the whole subject.

Q. The information was furnished in the same manner?

A. Yes, sir.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I object to it as hearsay.

(The table referred to was received in evidence and marked "Government Exhibit No. 331, December 17, 1912," and a copy thereof will be found in the volume of exhibits.)

MR. COLTON: I ask to have marked for identification the table on page 82 of said annual report for 1910, together with the introductory words, "The following table gives the production of black plates or sheets for tinning by States in the last six years, in gross tons."

(The table referred to was marked for identification "Government Exhibit, for identification, No. 332.)

By MR. COLTON:

Q. In what manner was said table prepared?

A. The same manner exactly as the other.

Q. Based on the same information?

A. Based on the same information, and the figures cover the output of the whole country.

MR. COLTON: I offer it in evidence.

MR. SEVERANCE: Same objection.

(The table referred to was offered in evidence and marked "Government Exhibit No. 332, December 17, 1912," and a copy thereof will be found in the volume of exhibits.)

MR. COLTON: I ask to have marked for identification the table appearing on page 84 of said annual statistical report for 1910, together with the introductory words beginning "The following table gives by States the production of nail and spike plate in the last five years in gross tons."

(The table referred to was marked "Government Exhibit No. 333, for identification.")

By MR. COLTON:

Q. State the manner in which said table was prepared, and upon what sources of information it is based.

A. The same manner and the same sources as were used in compiling the other tables; and it also covers the total production in the whole country.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I object to that table as hearsay and immaterial.

(The table referred to was offered in evidence and marked "Government Exhibit No. 333, December 17, 1912," and a copy thereof will be found in the volume of exhibits.)

MR. COLTON: I ask to have marked for identification the table appearing on page 11, of part two of the work entitled "Annual statistical report for 1909, of the American Iron & Steel Association, containing detailed statistics of the iron and steel industries of the United States for 1909, and immediately preceding years," together with the introductory paragraph beginning on page 10, "Production of miscellaneous rolled products," said table ending with the figures 4,597,497.

(The table referred to was marked "Government Exhibit No. 334, for identification.")

By MR. COLTON:

Q. State the manner in which said table was prepared and upon what sources of information it was based?

A. In the same manner and from the same sources as the other tables were prepared. The figures cover the output of the whole country.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: I make the same objection, as hearsay.

(The table referred to was offered in evidence and marked "Government Exhibit No. 334, December 17, 1912," and a copy thereof, will be found in the volume of exhibits.)

By MR. COLTON:

Q. Mr. Gray, referring to the several products named in the table appearing on page 11 of part 2 of said report, Government Exhibit No. 334, are the returns in respect to the several products kept by companies or not?

A. Yes; they are compiled from returns received from the companies in exactly the same way, on the same blank as the other figures.

Q. I know, but are they kept in folders by companies?

A. They are kept in folders, yes.

Q. So that in a single folder would you have more than one year?

A. No.

Q. And you would have a single year in a single folder?

A. Yes, sir.

MR. COLTON: I offer in evidence tables of the comparative production of all kinds of finished rolled iron and steel by the subsidiaries of the United States Steel Corporation and by the independent companies for 1907, 1908, and 1909.

STIPULATION.

It is stipulated that said tables were prepared from the same sources of information and in the same manner as Government Exhibit No. 334.

MR. SEVERANCE: We object to each of those three exhibits separately, on the same ground as we objected to Government Exhibit No. 334.

(The tables referred to were offered in evidence and marked respectively "Government Exhibits Nos. 335, 336 and 337, December 17, 1912," and copies of the same will be found in the volume of exhibits.)

By Mr. COLTON:

Q. Do said tables, Government Exhibits Nos. 335, 336 and 337, cover in respect to the several products named, the entire United States?

A. Yes.

Q. In what manner do you keep your rail production?

A. In exactly the same manner as we keep the production of any other rolled products.

Q. By years?

A. By years, yes.

Q. Referring to the table entitled, "Statistics for 1898, 1899 and 1900," Government Exhibit No. 323, will you give me a list of the companies subsequently taken over by the United States Steel Corporation that manufactured rails during each of those three years?

A. Yes, sir. I can give it to you. Do you want—

Q. Take 1898 first and do it in order.

By Mr. Severance:

Q. You are about to answer from certain written papers that you have in front of you, are you not?

A. Yes, sir.

Q. What are those papers?

A. Papers compiled from the returns which were booked in our regular book. I can take the books, if it is desired.

Q. That is, basing your answer upon the same sources of information as in the case of other statistics which you have given here, namely, returns made to you by months?

A. Yes.

Mr. Severance: I object to the answer on the ground that it is hearsay.

The Witness: In 1898 rails were made by the Illinois Steel Company, the Lorain Steel Company, the Carnegie Steel Company, and the American Steel Hoop Company.

Q. Will you give the amounts manufactured by each of those companies?

Mr. Severance: I object to that on the same ground, that the evidence is hearsay.

A. Illinois Steel Company, 577,812 gross tons; Lorain Steel Company, 108,268 tons; Carnegie Steel Company, 561,757 tons; American Steel Hoop Company, 1,434 tons.

Q. Have you the separate specifications as to light rails and standard rails on that table?

A. Not that far back, I do not think, Mr. Colton. Wait a moment and I will see how far back we do go. We make a division there under 45, and so on. I do not think that is prior to 1907.

Q. No matter; we will pass that, then. Take the year 1899.

MR. SEVERANCE: That is, you are asking for the amount, the same way?

MR. COLTON: Yes.

MR. SEVERANCE: The same objection.

A. The Illinois Steel Company, 618,924 tons; Lorain Steel Company, 136,280 tons; Carnegie Steel Company, 604,343 tons; American Steel Hoop Company, 1,464.

Q. Take the year 1900.

MR. SEVERANCE: I make the same objection.

A. In 1900, the Illinois Steel Company, 637,447 tons; Lorain Steel Company, 125,522 tons; Carnegie Steel Company, 626,831 tons; National Steel Company, 62,050 tons; American Steel Hoop Company, 268 tons. Now, in the same year the Tennessee Coal, Iron & Railroad Company made some rails, but those figures were excluded from your statement.

Q. What are those?

A. Those are open hearth rails, 886 tons.

Q. Can you answer the same question for 1901?

A. We have not had it compiled.

Q. Can you find the production of the National Steel Company in 1901, in rails?

A. I could find it.

Q. I wish you would.

MR. SEVERANCE: I object to that as hearsay and immaterial.

A. 122,812 tons.

Q. That was furnished by the National Steel Company?

A. Apparently. It is marked National Steel Company here. I may say we entered the names of the works and not the names of the companies.

Q. Furnished in the same general manner?

A. In the same general manner.

Q. The Lorain Steel Company?

MR. SEVERANCE: I make the same objection as to all 1901 figures.

A. 152,606 tons.
Q. Will you give me the Illinois Steel Company for 1901?
A. 733,025 tons.
Q. And the Carnegie Steel Company?
A. 708,113 tons.
Q. The Tennessee Coal, Iron & Railroad Company?
A. 1,357 tons.
Q. The American Steel Hoop Company?
A. 2,520 tons.
Q. Will you find out whether the Cleveland Rolling Mill Company manufactured any rails in 1895?

MR. SEVERANCE: Objected to as immaterial and hearsay.

A. No, it did not.
Q. In 1896?

MR. SEVERANCE: I object on the same ground.

A. In 1896 the Cleveland Rolling Mill did not roll rails.
Q. The same question for 1897.

MR. SEVERANCE: The same objection.

A. No rails rolled in 1897.
Q. 1898?

MR. SEVERANCE: Same objection.

A. No rails rolled.

STIPULATION.

It is stipulated by counsel that in the year 1900, and until April 1st, 1901, the following companies were members of the American Iron and Steel Association:

Carnegie Steel Company; Illinois Steel Company; National Steel Company; National Tube Company; American Steel & Wire Company; American Tin Plate Company; American Sheet Steel Company; American Bridge Company; Tennessee Coal, Iron & Railroad Company; Lorain Steel Company; Sharon Steel Company; as well as other companies

not at any time acquired by the United States Steel Corporation. Since the year 1901 the United States Steel Corporation itself has been a member of the American Iron and Steel Association, but none of its subsidiary companies have been members since they became subsidiaries.

MR. COLTON: I am through with Mr. Gray.

(Whereupon, at 1:00 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed before Special Examiner John A. Brown.

JAMES M. SWANK,

a witness produced on behalf of the United States, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. COLTON:

Q. How long have you been connected with the American Iron & Steel Association?

A. Just forty years on the 31st day of this month.

Q. What position do you hold in that association?

A. I came here as secretary of the American Iron & Steel Association, and I remained its secretary until 1885, when I was elected, at a large meeting of the members of the Association, its general manager. I have held that position ever since.

Q. To what extent are the iron and steel manufacturers of the United States members of the Association?

A. Practically all; virtually all.

MR. COLTON: That is all.

CROSS EXAMINATION,

By MR. SEVERANCE:

Q. You say that you have been connected with the American Iron & Steel Association for forty years?

A. Yes, sir.

Q. And that up to 1885 you were the secretary of the association?

A. Yes.

Q. Since then what position have you held?

A. General manager; responsible for all the work done in this office.

Q. What were your duties as secretary of the association?

A. The gathering of statistics, and their publication in our annual reports; the collection of information descriptive of the various companies and iron and steel plants of the country; which information was embodied in our directory. The directory, in those days, was published every few years. Now it has been appearing only about every four years. We have issued, in all, seventeen editions of the directory, during my forty years of service in this office, and forty annual reports. The annual report is this yellow colored volume here (indicating).

Q. Yes; we have had some of them for examination this morning.

A. Yes.

Q. As general manager, did your duties change from what they had been as secretary?

A. They were enlarged somewhat. At the meeting to which I referred, when I was elected general manager, in 1885, the opinion was generally expressed by all the gentlemen present that, as I had to see to everything and oversee everything that was done in the office, as the executive head of the association, it would not be necessary for an executive committee to meet statedly and advise with me what ought to be done. All the same, I consulted with the executive committee while they were in life. They died, one after the other, and their places were not filled; so that we have today no executive committee.

Q. You say that while you were secretary your duties were to collect statistics?

A. Yes; and editing the Bulletin. We published, in those days, a weekly paper which gave trade news and discussed questions of the day. You know this is a protective tariff organization, always has been; and I came here partly because of my supposed familiarity with that question.

Q. You say you published a Bulletin of trade conditions. How often was that published?

A. For several years that was published nearly every week. I remember that, at the end of the year, I would say to my associates in the office: "This year we had forty-five issues or forty-six or forty-seven issues of the Bulletin." We would occasionally skip a week, because of the pressure of other work,—for instance, the bringing out of this report.

Q. Those bulletins were printed, you say. Where were they circulated?

A. They were printed right here in Philadelphia.

Q. Yes; but where were they circulated?

A. They were sent to all the iron and steel manufacturers in the country.

Q. Not only to manufacturers, but to fabricators, were they not?

A. As a general rule we paid no attention to fabricators; only to those who manufactured the leading forms of iron and steel, with which we are all familiar.

Q. You sent it to structural men, did you not?

A. In those early days we did not have any structural people.

Q. That is true. The Bulletin continued, however, down to later times, did it not?

A. Oh, yes, indeed. We publish it yet.

Q. And that circulates generally among the people engaged in the iron and steel business, does it not?

A. The manufacturers of iron and steel; those who make pig iron, bar iron, bar steel, plates, sheets, steel rails, wire rods, wire nails, etc.

Q. In your directory that you have stated that you published—one of them was introduced in evidence this morning—you published lists of people engaged in the different

lines, not only of steel manufacture, but who are users of steel, like bridge builders?

A. We published in 1903 what we termed a supplement to the directory, which was devoted almost exclusively to the compilation and publication of lists of iron and steel consumers—those who bought the products of our iron and steel works.

Q. Where did you receive the information that went into that list?

A. Right here.

Q. How did you find out the names of the consumers? Mr. Gray testified this morning, that the information with reference to the production came from the manufacturers. Where did you get your information relative to the consumers? From different sources?

A. From my own general knowledge of the iron business.

Q. During all this period have you been in constant receipt of trade papers?

A. Yes, sir.

Q. And you have examined them?

A. Yes, sir.

Q. And you have been in correspondence, during all this period, with the manufacturers and many of the consumers?

A. I have not been in correspondence with all the consumers.

Q. I say, with many of the consumers?

A. Since the compilation of that supplement of 1903? Is that it?

Q. Yes.

A. I suppose we have been in correspondence with a large number of consumers, but certainly not with all. Nor did we attempt to do so.

Q. I understand that. Of course you could not be in correspondence with all of them. If you were you would be in correspondence with everybody in the United States.

A. That is right.

Q. But you have, for forty years, been in very close touch, have you not, Mr. Swank,—perhaps as much so or more so than any other person,—with the business of manufacturing steel in the United States?

A. Well, I think so.

Q. And you have, you say, from year to year published the results of your work and the collection of statistics in connection with prices, and the amounts of production and the general movements of the trade?

A. The directory and the annual report contain the information which we gathered directly from the manufacturers, and the Bulletin also contains statistical information (producing copy of the Bulletin). The Bulletin has been in that style and shape ever since I came here.

Q. There was introduced in evidence this morning, Mr. Swank, in connection with the examination of Mr. Gray, your directory which was published under the name of the Fourteenth Edition, corrected to April 1, 1898, which seems to be a rather large book. That was marked "Government Exhibit No. 325, I believe.

A. We have done better since those days.

Q. And there was also introduced a book which was marked "Government Exhibit No. 326," which is a supplement corrected down to August 15, 1900, called the 2nd Edition?

A. That is the second supplement we issued in that year.

Q. You also published a first edition of the supplement, did you not?

A. Certainly. There were two supplements in that year.

Q. There was also printed by you what was called the supplement to the Directory of the Iron & Steel Works of the United States, corrected to February, 1900, was there not?

A. That is right. The other was in August, the same year.

Q. Yes. I notice in this Government Exhibit No. 325, and also in Government Exhibit No. 326, that you published a preface?

A. I wrote the prefaces to all the volumes and all the directories, which summarized the contents.

Q. They summarized the contents and stated the situation of the industry at the time, did they not?

A. Yes, sir.

Q. And they stated the situation correctly, as you understood it, of course?

A. As I understood it, Mr. Severance, certainly.

Q. I notice on Roman page VI, of Government Exhibit No.

325, in the preface that you wrote, the following language, under the head of Blast Furnaces:

"It is always a most difficult matter to compile a list of blast furnaces which are either active or may truthfully be said to be likely to be some day. There are some idle furnaces which, if we were to use our own judgment, we would now promptly class as abandoned, but their owners insist that they are in good condition and are not abandoned, and because they insist upon it, and because we would not even seem to do injustice to anyone, we retain these furnaces in our so-called active list, and we include their capacity in the aggregate blast furnace capacity of the country."

That was the fact, was it?

A. At that time, yes, sir.

Q. So that figures with reference to blast furnace capacity in the country would have to be taken subject to whatever modification was embodied in that statement?

A. Yes, sir. Your view is correct. The manufacturers discounted the figures of capacity according to their knowledge of the actual conditions. They would know that here is a furnace and there is a furnace that is not likely to blow in at all; but their owners thought there was a chance for them; and of course we had to include them. The furnaces were there, you know; and, as a matter of fact many of those furnaces did afterwards blow in.

Q. Is it not your experience, Mr. Swank, that in prosperous times, when the market is good and prices are high a great many furnaces are blown in that are not in operation when times are poor?

A. That is correct, sir.

Q. So that production would vary in that way?

A. Yes.

Q. In giving the figures in this volume you have, I notice, given capacity figures?

A. Yes, sir; I always do that in the directory.

Q. And those capacities are learned by you from the reports sent in by the owners?

A. Yes, sir. Mr. Gray and other assistants that I have had, and myself always watched very carefully so that no furnace could be counted as an active furnace which we

personally knew, or knew from our correspondence, was a dead furnace, never to blow in again. That furnace and its capacity would be excluded, if we knew it ourselves.

MR. SEVERANCE: I will ask the stenographer to identify this volume, which is called "Supplement to the Iron & Steel Works Directory, 1900, and which upon its title page recites that it is corrected to February, 1900."

(The volume referred to was marked "Defendant's Exhibit No. 16, for identification.")

By MR. SEVERANCE:

Q. I show you Defendant's Exhibit No. 16, which is a book that is entitled "A supplement to the Directory to the Iron and Steel Works of the United States, corrected to February, 1900."

A. Yes, sir.

Q. I will ask you if there was a publication of yours intermediate between Government Exhibit No. 325, called the 1898 Directory, and the second edition of the supplement published in August.

A. Yes.

Q. This is intermediate between the two?

A. Yes, sir; that is correct.

Q. And this book which I have handed to you, Defendant's Exhibit No. 16 for identification, is the first edition of the supplement, the second edition of which came out in August, and contains some additional statistics?

A. I think it is so marked, is it not?

Q. Yes. It is marked as the second edition.

A. Yes; that is right.

Q. And this book embodied the situation as you understood it at the time it was issued; that is, corrected down to February, 1900; and the changes that had taken place between that time and the publication of the Directory of 1898?

A. Yes, sir. Those were very busy days in the Iron trade, and changes were taking place all the time.

MR. SEVERANCE: I offer in evidence this book which has been marked "Defendant's Exhibit No. 16" as a part of the cross examination of the witness.

MR. COLTON: I object; first, on the ground that it can not be offered in evidence as a part of the cross examination; second, on the ground that it is incompetent, irrelevant and immaterial, and especially on the ground that the preface contains self-serving statements of the co-conspirators.

MR. SEVERANCE: Is Mr. Swank a conspirator?

MR. COLTON: I have not suggested such a thing as that.

MR. SEVERANCE: That is what you say—that it contains self-serving statements of the co-conspirators. He made the statements.

MR. COLTON: Well, there is no use arguing about that.

(The book so offered and identified was thereupon marked "Defendant's Exhibit No. 16, December 17, 1912.")

By MR. SEVERANCE:

Q. Mr. Swank, you wrote this preface, did you not, to that supplement?

A. I wrote the preface to every edition of the directory that has ever appeared.

MR. SEVERANCE: I will state in the record that I am compelled to offer this book because, while counsel was putting in his directories this morning he put in the directory of 1898, stepped over this supplement, and put in the second edition, although I requested him—and that appears upon the record—to introduce this supplement.

MR. COLTON: And I will say, in that connection, that I put in the second supplement because it is nearer in point of time to the formation of the United States Steel Corporation, and also because Mr. Gray testified that these supplements were each of them practically an edition of the original directory.

MR. SEVERANCE: I assume from that that counsel does not regard the date of the organization of the subsidiaries of the Steel Corporation as important in this case, that being nearer in point of time to the publication of this first supplement than to the time of the publication of the second supplement.

By MR. SEVERANCE:

Q. Calling your attention to the preface to this supple-

ment, I suppose that embodied your knowledge of the situation of the iron and steel trade as of that date, did it not, Mr. Swank?

A. Yes, sir; that was the object in producing these supplements—to bring down to date all the things that had taken place in the trade since the appearance of the last directory.

MR. COLTON: I want to add a further objection to the introduction of this supplement: I object, further, to the statements contained in the directory, in so far as they refer to trusts and monopolies, on the ground that they involve a question of law for the Court, and upon which no witness is competent to pass.

By MR. SEVERANCE:

Q. In this preface to the supplement you use this language:

A. You understand, Mr. Severance, that I have written much in the last forty years. I do not know just what I did say at the time.

Q. I am going to read it to you.

A. It was true, as I understood it.

Q. That is just what I was going to ask you. I know that.

I read a few words from pages 4, 5 and 6 of the preface to the supplement of February, 1900, which has been marked "Defendant's Exhibit No. 16."

"A careful examination of the contents of this volume will utterly fail to establish the truthfulness of the oft-repeated charge that there are trusts in the American iron trade. There are neither trusts nor monopolies in the iron trade of this country."—

MR. COLTON: Read all of it.

By MR. SEVERANCE:

Q. (Continuing reading):

"Every consolidation that is described in these pages is in good faith what it pretends to be. It represents in each case a large investment of capital for the purpose of uniting in one ownership and under one management independent and often widely separated plants."

A. That is right.

Q. That is correct, is it not?

A. That is correct; I wrote that.

Q. And that was the fact, at that time?

A. I believed it to be so, yes, sir; at that time.

Q. (Continuing reading):

"This policy of concentration of capital and energy, which is in accordance with the industrial spirit and necessities of the age, is amply justified by the increased facilities it affords for securing economy and efficiency in management."

Is that right?

A. Yes.

Q. (Continuing reading):

"It is not based on the prospect of securing higher prices for products or lower wages for labor; although it is certainly no offense, either in law or in morals, to insist upon prices that will sufficiently recompense the capital and the labor that are employed in producing articles of necessity or convenience. If prices have been advanced since the organization of some of the consolidations mentioned in this supplement, so also have wages. These results have taken place as a consequence of economic conditions which are world-wide. This country, particularly has, for more than a year, enjoyed a season of extraordinary prosperity, in which all our industries have shared. The consolidations in the iron trade, which we describe, compete in the main with one another in the production of iron and steel; and in no instance has a monopoly in the production of any iron or steel products been established through their instrumentality. Every article of iron and steel that is produced by the consolidated companies is also produced by firms or companies in this country that are independently operated."

A. That was correct.

Q. That was correct?

A. Yes.

Q. Following that there is a mention of three or four of these companies, the Tennessee Coal & Iron, the Illinois Steel, the Edgar Thomson and the Lackawanna Steel at Scranton, and also reference to the Wheeling Steel & Iron Company and the Aetna Standard Iron Company as consolidations. Do you remember all of them?

A. Yes, sir; I do.

Q. Some of them afterwards became subsidiaries of the Steel Corporation, and others did not?

A. That is correct.

Q. In preparing these supplements and securing the facts upon which you made your reports to the trade, Mr. Gray was your coadjutor and assistant?

A. Yes. I was looking up that record this morning. He has been my principal statistical assistant since 1892. That is exactly twenty years. That is since the year of the Homestead trouble; it is just twenty years since I promoted Mr. Gray. Prior to that time he had been assistant to another gentleman.

Q. You may identify this book, which on its title page is called, "Statistics of the American and Foreign Iron Trades for 1899, presented to the members May 25, 1900."

A. Yes.

(The book so identified was marked "Defendants' Exhibit No. 17 for identification.")

Q. I show you this Defendants' Exhibit No. 17, and ask you if this is the annual statistical report of the American Iron & Steel Association presented to the members May 25, 1900, covering the year 1899?

A. Yes, sir. This is our annual report for the year 1899, and previous years.

Q. It contains a large amount of statistics and other information with reference to the iron and steel trade?

A. Yes.

Q. I will offer this book in evidence, as part of the cross examination of the witness, being for the same year from which such statistics have been offered by the complainant, contained in Government Exhibit No. 323.

MR. COLTON: I object to all statements in the work other than statistics, on the ground that it has not been shown upon what sources they are based, and that they are hearsay; also as incompetent, irrelevant and immaterial.

(The book referred to was thereupon marked "Defendants' Exhibit Swank No. 17, December 17, 1912.")

By Mr. Severance:

Q. Mr. Swank, was it any part of your business to, and did you, during this period, keep track of foreign markets as well as American markets?

A. I did.

Q. And general trade conditions at home and abroad?

A. Yes, sir. They were, however, more generally and frequently referred to in the columns of our Bulletin than in the annual reports.

Q. But you kept personally familiar with them?

A. It was a part of my work.

Q. That was your regular work?

A. Yes, sir.

Q. And you were in no other business, were you, all these years?

A. I have given forty years of my life to this one office; this one work; nothing else.

Q. I call your attention to this language appearing under the head of "General Review of Trade at Home and Abroad," at page 17 of Defendants' Exhibit No. 17, and ask you if it is a correct statement of the situation as it existed at that time. (Reading):

"When the preparation of our last annual report was completed, on May 5, 1899, the industries of this country, without noteworthy exception, had entered upon a session of extraordinary prosperity. The activity in these industries in 1898, which was fully noted in our report above referred to, had been intensified in the early months of 1899. The aids to complete prosperity which had been lacking in 1898, namely, higher prices for manufactured products, and higher wages for labor, had now become generally effective. Everybody saw that the active demand for manufactured products and for the products of our mines and forests, was certain to continue for some time to come, and that it would be accompanied by a still higher range of values."

A. It reads as if I had written it.

Q. And it was an accurate statement of the situation in those days?

A. I believed it to be correct at that time, certainly.

Q. (Continuing reading):

"Since this hopeful outlook was everywhere recognized by business men, a whole year has passed, and there has been developed in the meantime a more pressing demand and higher prices than were then foreshadowed. The mills and factories and workshops of the country have been operated to their fullest capacity, and our mining and lumber industries have never been so actively employed. This great activity has given increased business to the railroads in the transportation of both manufactured products and crude materials. The abundant agricultural crops of 1899 have also contributed to increase the business of the railroads; so that, with the increased tonnage from the other sources mentioned, they, too, have been operating to their fullest capacity."

Q. That was a boom year, was it not?

A. Yes.

Q. And that was a correct statement of the situation at that time?

A. Certainly it was.

Q. (Continuing reading):

"The home and foreign demand for these crops has been so large that previous high prices for most of them have been well maintained, while cotton, which has been an exception to the general advance in agricultural prices, has commanded unusually high prices in the last six months,—higher than at any time since 1893."

A. I was familiar with all that business at that time.

Q. What is the fact, Mr. Swank, as to whether agricultural prosperity in the country, prosperity in the raising of cotton, grain, cattle, brings prosperity to the iron industry?

A. Undoubtedly.

Q. It always has?

A. It has always been so. If the farmers are prosperous, others, as a rule, are.

Q. That is the foundation of prosperity?

A. Yes. They create a market for manufactured products.

Q. And that helps the railroads. They have more stuff to transport in both directions?

A. Yes, sir.

Q. And the railroads are large customers of the steel manufacturers, are they not?

A. Yes. They consume probably one-third. That is right, is it not, Mr. Gray?

MR. GRAY: From thirty to thirty-five per cent.

THE WITNESS: They consume from one-third to thirty-five per cent of all the iron and steel made in this country.

By MR. SEVERANCE:

Q. I continue to read:

"In all the leading industries of the country there has been a material increase in wages since the spring of the 1889 supplementing the increase that had then taken place. Labor, both skilled and unskilled, has never been in greater demand in this country. Prosperity, in brief, has been general. The prosperity of one industry has helped that of another."

That was a truthful statement of the situation in this country at that time?

A. As I understood it, yes, Mr. Severance.

Q. All in all, the year 1899, was the most prosperous year in our history?

A. Up to that time.

Q. (Continuing reading):

"And thus far in 1900 there has been no very great diminution of this prosperity; but it must be frankly added that the demand for many manufactured products is not now so active, nor are prices as high as in 1899, and early in 1900."

Q. This has been corrected down to May 25?

A. Yes; the early part of the year.

Q. And there were fluctuations?

A. Yes.

Q. Again, I read from page 19. I will not stop to put all this in; but, after stating how prices had gone up, and the demand had increased, and so forth, this language appears: (Reading):

"The foregoing chronological and statistical record of a remarkable boom in the American Iron Trade, was attended by extraordinary features, which distinguish it from every previous boom. Foreign competition was at no time a factor

in determining the prices or in bringing the boom to an end. Europe needed all the iron and steel that its manufacturers could supply, and prices for those products rose rapidly in all European markets. Tariff duties on iron and steel were lost sight of by American manufacturers. Prices of iron and steel in American markets advanced in 1899 because the demand was greater than had ever before been known, and because, early in the year, the impression became general, and the idea was thereafter sedulously cultivated that our capacity for the production of iron and steel and iron ore and coke was not equal to the country's wants; and to the persistency with which this famine cry was repeated, for at least six months of 1899 may be traced much of the excitement that prevailed in that year in our iron and steel markets, the haste to place orders for future delivery never before having been equalled, and yet, with few exceptions, there was no scarcity of iron and steel or of raw materials; and much of the scarcity that was here and there developed was due to the inability of the railroad companies of the country to supply cars and motive power for the transportation of raw materials. The production of iron and steel and of iron ore and coal and coke was of phenominal magnitude. All of the furnaces, the rolling mills and steel works and foundries that were in operation at the beginning of the year, or that could be put in operation, were constantly employed. Our producing capacity was greatly increased. Furnaces and other plants that had long been idle, were revived. Additions were made to plants already active; new iron and steel works and coke ovens were built, and old iron ore mines were reopened. The reaction from the four years of depression following the financial panic of 1893, was at full tide all through 1899."

Those statements are correct, are they not?

A. Yes; they were.

Q. Then after saying that the distinguishing feature of the iron and steel boom was the organization of a large number of powerful consolidations, this report further says:

"It would not have been possible to advance the prices of iron and steel in this country to the figures obtained in 1899, if there had not been in the same year an unusual advance in the prices of European iron and steel, which prevented

orders from going abroad. This advance in our markets followed active iron and steel markets in Great Britain and on the Continent in 1898 and in immediately preceding years."

Then follows statements of the advances in prices in England and in Germany, France and other places in Europe, and in England, steel rails at Middlesbrough going up from four pounds, twelve shillings, and sixpence to seven pounds; that is, as a mere example. You recall that period of that great boom abroad as well as at home?

A. I remember it very well.

Q. Comment is made at pages 22 and 23, I see, of the enlarged use of iron and steel in ship building and bridge building, and the increased use of steel in the construction of private buildings and dwellings?

A. Yes.

Q. Was that about the time when steel began to be more actively employed in construction work?

A. Skyscrapers commenced about twenty years ago.

Q. And this was 1899, about thirteen years ago, and it had become pretty general then?

A. Yes.

Q. And it was constantly growing?

A. Yes; it began about twenty years ago.

MR. SEVERANCE: Have you the statistics for 1898? Did you put them in, Mr. Colton?

MR. COLTON: I put in the statistics. I did not put in any argument for 1898.

MR. SEVERANCE: Did you put in the book?

MR. COLTON: No, I did put in the statistics.

MR. SEVERANCE: Did you put in anything from the volume of statistics, or only that typewritten table?

MR. COLTON: From 1899?

MR. SEVERANCE: 1898. That is the one that is to be prepared?

MR. COLTON: No, it was prepared and put in evidence.

MR. SEVERANCE: That is the statistics for 1898 presented to the members in May, 1899. I would like that book produced.

MR. COLTON: I object to this line of examination as bringing out new matter and not proper cross examination.

MR. SEVERANCE: I think it is proper cross examination, in view of your interrogation of Mr. Swank as to his relations to this business and who the membership was, and all that.

MR. DICKINSON: I thought you were producing a lot of books that have not been put in.

MR. SEVERANCE: I am, but it is a book prepared in the regular course of business from information furnished him the same as your book.

MR. COLTON: He did not testify all the information was prepared in the same manner as the statistics were.

MR. DICKINSON: Are you putting in evidence a book that we have not put in evidence?

MR. SEVERANCE: Yes; a couple of them which are similar to yours. For instance, you put in the directory of 1898 and the second edition to the supplement, but did not put in the first, which was intermediate, and I put that in.

MR. DICKINSON: We want to enter an objection.

MR. SEVERANCE: You did enter voluminous objections. I think that is all I will ask Mr. Swank to answer. I can get at the rest that I want from Mr. Gray.

RE-DIRECT EXAMINATION

By MR. COLTON:

Q. I only have one or two questions by way of cross-examination on new matter. Mr. Swank, you were asked in regard to whether you had written the preface to the statistics for 1899, not the preface, but the introductory remarks.

A. Invariably I wrote them to every annual report that has ever appeared.

Q. In those introductory remarks, as read, there was reference made to the condition of the steel industry as it existed prior to 1899, back to the period of prostration of 1893 and 1894.

A. I do not recall that, but I have no doubt that I did cover that ground, and covered those years.

Q. I will read to you from the statistics for 1895 (handing book).

A. This is for the year 1895; certainly, I wrote it all.

MR COLTON: I ask that page 21 of the report for 1895 be marked for identification.

(The page referred to was marked "Government Exhibit No. 338, for identification.")

Q. "The recovery of our iron and steel industries in 1895 from the prostration of 1893 and 1894 was not only complete, but it was remarkable in the magnitude of the results that were attained. In most of the branches of these industries, the largest production ever recorded was achieved in 1895. Steel rails form the notable exception to the rule of largest production in that year. A summary of the leading results established by the statistical details to be presented hereafter is worthy of the prominence that is here given to it. In 1895 the United States made 9,436,308 gross tons of pig iron 4,909,128 tons of Bessemer steel ingots, 1,137,182 tons of open hearth steel, and 6,114,834 tons of steel of all kinds, and rolled in all 6,189,574 tons of finished iron and steel, including rails. There were also shipped in the same year 10,438,268 tons of Lake Superior iron ore and 8,244,438 net tons of Connellsville coke. The year 1895 was the champion year in the production of American iron and steel."

I will ask you as to whether that statement is correct or not.

A. Oh, undoubtedly, Mr. Colton; undoubtedly.

Q. I will ask you whether it is not a fact that the production of 1897 was greater than the production of any year previous to that.

A. 1897, you said?

Q. Yes.

A. This is for the year 1895, is it not?

Q. Yes.

MR. SEVERANCE: He can not remember without reference to the book.

MR. COLTON: I will withdraw that question. It appears from the tables already introduced.

By MR. COLTON:

Q. I wish to know, Mr. Swank, as to why the various sup-

plements of the Iron and Steel Directory are gotten out by the association.

A. Why they are?

Q. Yes.

A. I think I have explained that, but if not, I will mention it again.

Q. It did not go down in the record when you explained it.

A. The growth of the iron and steel industries of this country had made it necessary for us to enlarge our directory from a volume of 150 to 200 pages to one of 500 or 600 pages, and we could not bring out a new edition of the directory as frequently as we did in the early days. The early editions of the directory were only two years apart, and latterly, four years apart. Well, that we might not fall too far behind the procession, you see, we found it necessary—at least, I thought it was necessary, that we publish a supplement every now and then that would bring down the information contained in the directory, the additions that had been made to existing plants, the new companies, organized, etc., etc. Now we have published a supplement to our Directory this year, a supplement to our Directory of 1908, which gives a list of all the blast furnaces in the United States and those recently abandoned, and so on. That was the reason for the appearance of the supplement. We could not bring out the Directory every two years, as formerly.

MR. COLTON: Yes. That is all I have to ask.

RE-CROSS EXAMINATION.

By MR. SEVERANCE:

Q. In view of the question just asked you, with reference to the recovery in 1895, I will ask to have identified your statistics of American and foreign iron trades for 1897, which, on its title page, states that it was presented to the members September 10, 1898. I would like to have you identify this book. (Handing book).

A. Certainly: that is our work.

Q. That is for that year I have just stated?

A. Surely: yes, for 1897.

MR. SEVERANCE: What I want to do is simply to introduce one little fragment here about the prices in panic periods. You do not want the whole book to go in, do you?

MR. DICKINSON: What page?

MR. SEVERANCE: Page 26, under the head of "Lower prices of iron and steel."

MR. DICKINSON: How much do you want to put in, and what are you offering?

MR. SEVERANCE: I would like to have it identified as an exhibit. I will do as Mr. Colton did this morning, mark the book for identification.

(The book referred to was marked "Defendant's Exhibit 18, for identification.")

MR. SEVERANCE: Now, turning to page 26, I offer in evidence that portion of Defendant's Exhibit 18 commencing with the words "Lowest prices of iron and steel" on page 26, and including all of the balance of that page and the table on page 27. The table covers the whole of page 27. I also offer from the same volume, on page 29, commencing with the words "Average yearly prices of iron and steel," including the table of prices for 1893 to 1897, inclusive, and the language that immediately precedes that, under the heading that I have mentioned.

(The pages so offered and identified were thereupon marked "Defendant's Exhibit No. 18, and Defendant's Exhibit No. 18a, December 17, 1912.")

By MR. SEVERANCE:

Q. Those statistics were prepared by you in the usual way?

A. Yes, sir.

Q. And from the same sources as the statistics offered here this morning by Mr. Colton?

A. Yes, sir.

MR. COLTON: Is this offered in evidence as cross examination?

MR. SEVERANCE: Yes. You see, you went into this question of 1895.

MR. COLTON: Only as cross examination.

MR. SEVERANCE: Then we will call this re-direct of your cross examination: it does not make any difference how it

goes in. It has to go in some time, and Mr. Swank is here now.

MR. COLTON: I object to the defendant's exhibit just offered in evidence, on the ground that it is not proper cross examination, and not examination upon anything that has been brought out by the petitioner, through this witness.

MR. SEVERANCE: That is the only objection, as I understand it, that it is not cross examination?

MR. COLTON: What did you offer from page 29?

MR. SEVERANCE: The average yearly prices of iron and steel for 1893 to 1897. To be perfectly frank with you, I offered that because it shows that the inference to be drawn from your last question of Mr. Swank, that there was a great recovery in 1895, would be unfair, because it was followed by another slump, and the lowest prices at any time, were in 1897.

MR. COLTON: I think it would be fairer if you offered the production of all those years.

MR. SEVERANCE: Very well; I will go right along and offer both. This book for 1911 contains the production for a great many years.

MR. DICKINSON: It does not go any farther than 1910, does it?

MR. COLTON: It contains 1911, but I do not think he is planning to offer that at present.

MR. SEVERANCE: I do not care whether the 1911 figures go in or not.

MR. DICKINSON: We will object to that.

MR. SEVERANCE: The production for 1911?

MR. DICKINSON: Yes.

MR. SEVERANCE: Why?

MR. DICKINSON: Because it contains statistics covering a period after the filing of the bill.

MR. SEVERANCE: Then give me the same one for the year previous. Have you a copy of this book, statistics for 1910, presented to the members July 25, 1911?

MR. COLTON: Yes.

MR. SEVERANCE: Page 97. This may be identified as **Defendant's Exhibit 19.**

(The page referred to was marked "Defendant's Exhibit No. 19, for identification.")

By MR. SEVERANCE:

Q. I show you Exhibit No. 19 for identification. That is your annual statistical report for the year 1910, is it not?

A. Yes, sir.

Q. Prepared in the same way, and from the same sources of information as the others which have been mentioned in direct and cross examination?

A. That is correct.

MR. SEVERANCE: I offer in evidence, in connection with the examination of this witness, the portion of page 97 of Exhibit No. 19, beginning with the words "Total production of finished rolled iron and steel," and ending with the tabulated figures for the year 1910 just below.

MR. COLTON: I object to it on the ground that it is not proper cross examination.

(The table so offered and identified was thereupon marked "Defendant's Exhibit No. 19, December 17, 1912.")

MR. SEVERANCE: You put in 1895 and I am putting in the rest of the years.

MR. COLTON: I did not put in 1895. You asked about 1899, which included every year from 1893. If you will look at what you read, you read a whole lot of stuff from 1893 to 1899, and you made him make a statement in regard to the condition of the steel industry during that period, and for that reason I asked him about 1895, which was included within the very period concerning which you had examined him, which was proper cross examination on my part, on matter which you had brought out.

MR. SEVERANCE: I am not complaining in the least about your examination. You were quite right in asking that question, and I am quite right in supplementing what you asked by asking the tonnage for other years. You asked for the tonnage for 1895, and I am asking the tonnage for previous and subsequent years. I am sure you do not object to that; you want that in the record.

MR. COLTON: I have made the objection. I notice you

have prices in here on page 27. We have not introduced any price statements.

MR. SEVERANCE: I have, though, have I not?

MR. COLTON: It has not been shown how the price statements were prepared, and I object on that ground also.

MR. SEVERANCE: The witness testified he kept in touch with the iron trade through the trade journals and correspondence.

MR. COLTON: That is very general as to how it was prepared.

MR. SEVERANCE: I will lay a foundation right now, if you do not think it has been done sufficiently.

By MR. SEVERANCE:

Q. Did you, during all these 40 years that you have been in this business from time to time publish prevailing prices?

A. We published the prices regularly in the Bulletin from week to week, and afterwards, semi-monthly.

Q. From what source did you obtain those prices?

A. Nearly all of them were obtained from the trade newspapers, nearly all; some we obtained ourselves by direct communication with merchants, iron and steel merchants right here in Philadelphia, and also in Pittsburgh.

Q. So that you were satisfied, when you published these price lists from time to time, that you were publishing the real prices at which the commodities sold in the market, were you not?

A. I do not remember that any iron and steel manufacturer ever complained of our price statements. They were accepted universally and generally by the trade as being correct.

Q. And you were at great pains to make them correct, were you not?

A. We certainly were. We have been hard workers in this office, every one of us.

MR. COLTON: Will you ask him what trade papers he took it from?

By MR. SEVERANCE:

Q. I am perfectly willing to. What papers?

A. The Iron Age of New York, the Iron Trade Review of Cleveland, the American Manufacturer, and afterward the Iron World of Pittsburgh, were the three leading trade papers upon which we relied for statistics; the Industrial World it is today.

Q. As I understand it, you supplemented your information obtained from the trade journals by interviews with merchants?

A. Not in all cases, but in many cases we got the information directly from the merchants and manufacturers, both.

MR. SEVERANCE: I think that is all.

MR. COLTON: That is all.

MR. SEVERANCE: Now, Mr. Gray, will you resume the stand?

WILLIAM G. GRAY

was recalled for

CROSS EXAMINATION.

By MR. SEVERANCE:

Q. Mr. Gray, Mr. Swank has just testified that you have been his coadjutor and principal assistant in this business for many years. That is a fact, is it not?

A. Yes, sir.

Q. Mr. Swank has testified that he wrote these various prefaces. You were present when I interrogated him?

A. Yes, sir.

Q. Did you have anything to do with the preparation of the material in those prefaces?

A. Oh, yes; I gave him the facts and figures, and then verified what he had said, afterwards.

Q. You were very familiar with the trade situations at all of these times, were you not?

A. At those times; yes, sir.

Q. I called Mr. Swank's attention to certain language in the preface to the supplement marked Defendant's Exhibit 16, being the supplement to the Iron and Steel Works Directory corrected to February, 1900. I wish you would look at

that preface. I will not stop to read it to you. It is not very long, but if you will look at it, I will ask you a general question in reference to it (handing book).

MR. COLTON: That is the preface to the supplement you put in evidence?

MR. SEVERANCE: Yes.

By MR. SEVERANCE:

Q. You have read it over?

A. I have read it before, yes, sir, undoubtedly.

Q. Were you, at the time that preface was published, familiar with it and with the statements contained in it?

A. Yes, sir.

Q. Did you assist in its preparation in the way you have stated you did, in connection with other reports?

A. I did.

Q. Will you state now whether or not the facts therein set forth were true as of that date?

A. I think so.

Q. They represented truthfully, as you understand it now, the situation as it existed when that was published?

A. As I understood it then, and as I understand it now.

MR. COLTON: I object to the witness being asked about the facts stated therein, there not being shown to be any facts in there. It does not properly distinguish between the facts and the opinions, and it prevents my making a proper objection thereto. Much of it is opinion.

MR. SEVERANCE: They are all facts. There are no opinions in there. You may find one somewhere; I do not know where it is. I did not know there were any opinions expressed there. I thought they were cold facts.

MR. COLTON: I object on the ground it has not been shown as to what facts were furnished by Mr. Gray to Mr. Swank in respect to the writing of this preface, and upon the further ground that the statements made in the preface are incompetent, irrelevant and immaterial, and are self-serving statements, among others, by various defendants who were conspirators and combinations in restraint of trade, and upon the further ground that it is not proper cross examination.

MR. SEVERANCE: What, of Mr. Gray?

MR. COLTON: Yes, of Mr. Gray.

MR. SEVERANCE: Here are some figures that were made up and have been checked over by Mr. Gray. He will testify to their correctness, but we have not had time to get them all typewritten. I am very sorry to present them to you in that way, but one is typical of all; they are simply for different years.

MR. COLTON: Are these tables prepared by Mr. Gray?

MR. SEVERANCE: They have been checked by Mr. Gray. They were prepared by Mr. Winslow, and they are simply computations.

MR. COLTON: You will bring that all out in your examination?

MR. SEVERANCE: Certainly. They are all computations taken right from their figures here, but made up by Mr. Winslow, and Mr. Gray has checked them and found them to be correct. I think it would be well to have this all fastened together and introduced as one exhibit. This may be identified as Defendant's Exhibit 20.

(The papers referred to were marked "Defendant's Exhibit 20, for identification.")

By MR. SEVERANCE:

Q. I call the witness's attention to Defendant's Exhibit 20. Who personally made those computations?

A. Mr. Winslow made the computations, and I checked them.

Q. Mr. Winslow is engaged in the accounting department of the United States Steel Corporation, is he not?

A. Yes, sir.

Q. He made these computations in your own office from your own records, did he not?

A. Yes, sir.

Q. Are those computations made from the same records that you have used in compiling all these statistics which have been introduced by counsel for complainant?

A. Yes, sir.

Q. And the sources of information as to these figures,

these tonnages, are the same as in the case of the figures he has introduced in evidence, are they not?

A. Yes, sir.

Q. Those computations were made yesterday?

A. Yes, sir.

Q. And you have been over them and know that they are correct, as shown by your books?

A. Yes, sir; I believe so.

Q. Will you kindly explain just exactly what this table is? I am calling your attention now to the table headed "Production for home consumption, 1911."

A. The total exports represent the total tonnage of iron and steel exported from the United States in the calendar year 1911. From that, we deducted the pig iron and radiators which are not rolled iron or steel products. That gives you the total exports of rolled iron and steel for that year. Then we have taken from the annual report of the United States Steel Corporation for 1911, page 26, the total exports by the Corporation. We have deducted from that the pig iron exported, and deducted that total from the total exports of rolled iron and steel, and that gives us the tonnage exported by companies other than the United States Steel Corporation. Now, then, the total production of all kinds of rolled iron and steel in the United States in 1911 amounted to 19,039,171 tons. You will find that on page 31, part two, of the statistics for 1911. Of that total, the United States Steel Corporation produced a little over 45 per cent., or 8,703,824 tons, leaving the production of other companies 10,335,347 tons. Now, we come to imports. The total imports of iron and steel into this country amounted to 262,457 tons in 1911, and those figures you will find on page 35, part one, of our report for 1911. We deducted the pig iron, which is not a rolled product, and that gave the total imports of rolled iron and steel in that year. Then we took the total production of the United States rolled iron and steel, 19,000,000, and we added the imports, and that gave us the total consumption. Then we deducted the exports, and that gave us the total consumption for the United States, leaving the consumption 17,093,006. Then we took the total production of the United States Steel Corporation of rolled

iron and steel, and deducted the exports, and that gave us the production by the United States Steel Corporation for home consumption. The United States Steel Corporation produced for home consumption 40.9 per cent of the rolled iron and steel consumed in the United States in 1911.

Q. Now, this exhibit contains a similar computation, the statistics being taken from the same sources, as to each year from 1904 to 1911, inclusive, does it not?

A. That is right; yes, sir.

Q. And those are embodied in the details attached to Defendant's Exhibit 20?

A. Yes.

Q. The first page here is merely a summary, is it not, showing the percentages of the details shown on the succeeding eight pages?

A. Yes, sir.

MR. SEVERANCE: I offer Defendant's Exhibit 20 in evidence.

MR. COLTON: I want to ask some questions by way of cross examination on the offer.

MR. SEVERANCE: Very well.

By MR. COLTON:

Q. Were these figures of export furnished to you by the United States Steel Corporation?

A. The exports by the United States Steel Corporation?

Q. Yes.

A. They were taken from their annual reports.

Q. They were not furnished to the American Iron and Steel Association, as a part of its work, were they?

A. No, sir.

Q. The total production of exports, do you gather statistics on that subject?

A. We do not gather them. We obtained that from the Bureau of Statistics of the Department of Commerce and Labor, United States Government statistics.

Q. Then the totals are based on Government figures?

A. On Government figures.

Q. All the other figures here are taken from the annual reports of the United States Steel Corporation?

A. Not all.

Q. Well, just let me limit it. First, as regards exports.

A. The exports of the United States Steel Corporation are taken from the reports of the United States Steel Corporation. The exports for the whole country——

Q. Yes, but reports to you, or annual reports?

A. Their annual reports.

By Mr. Severance:

Q. They are furnished you, are they not?

A. The annual reports are furnished us. We have them on file.

By Mr. Colton:

Q. But they are not furnished to the American Iron and Steel Association, in the course of its statistical reports?

A. Yes, sir; they are sent to us regularly, just the same as we send the United States Steel Corporation our reports, and they send us their reports. We use their figures right along.

Q. Are the exports of the United States Steel Corporation published in any of these annual reports?

A. I do not think they are. We may incidentally have given the figures occasionally, but as a matter of fact, we do not, as a regular thing, give them.

Q. Neither of the United States Steel Corporation nor of the independent companies?

A. Well, the combined exports of the independent companies and the United States Steel Corporation are always published, because they represent the total exports.

Q. The total exports, then, are published in your annual report?

A. Yes, sir; obtained from the Department of Commerce and Labor.

Q. But you gather no statistics as to total exports?

A. No.

Mr. Colton: I think I will have to object to the tables on the ground that this is not the proper witness to prove them by.

MR. SEVERANCE: Who is the proper witness?

MR. COLTON: It seems to me the Government reports. As far as the Government reports are concerned, I would as soon admit them, subject to correction.

THE WITNESS: The Government does not publish them. They are made up specially for us by the Government.

By MR. COLTON:

Q. Oh, the total exports are sent to you?

A. From the Department of Commerce and Labor. We furnish the Department of Commerce and Labor with a mass of statistics, and they, in turn, furnish us with the exports and imports, and figures of that kind.

MR. COLTON: I withdraw my objection, so far as it applies to the reports furnished by the United States Government. In so far as it refers to figures coming from the annual reports of the United States Steel Corporation, I object on the ground that this is not the proper witness to prove these figures by, and I object to all the figures for 1911, as subsequent to the suit, and therefore incompetent, irrelevant and immaterial; and on the further ground that at that time the Corporation had every reason for cutting down its production so as not to appear to have a high percentage.

(The papers so offered and identified were thereupon marked "Defendant's Exhibit No. 20, December 17, 1912.")

THE WITNESS: If you care to see these documents from the Bureau of Statistics, I would be glad to show them to you (producing papers). For instance, there is your export table O. K.'d by the Department.

By MR. COLTON:

Q. In regard to the checking of these figures, did you make the corrections yourself?

A. There were no corrections to make. We checked them off; Mr. Winslow read the figures off to me, and I checked.

Q. Did you read off to him the totals? Is that what you read to him?

A. I read the totals to him, and the details too and the percentages. We had part of those percentages in our annual reports, and the others were worked out just the same

as we would work out the other statements which I have presented, and it is a physical impossibility for me to work out all these percentages personally, of course.

Q. Did you have in your annual report any of the percentages produced by the United States Steel Corporation?

A. Yes; the percentages of production are there.

Q. Yes, but not the export production, I see?

A. No, that is a new feature.

Q. And you took for your calculation of the Corporation's production, in each case, the annual reports of the Corporation; is that right?

A. Yes; I think so. Let me see just what you mean. So far as the exports are concerned, we took their figures, yes. We had no other figures.

By MR. SEVERANCE:

Q. You took that from their annual reports, which have been on file here from the time they were issued, did you?

A. Yes, sir.

Q. Sent to you in the same way you receive reports from all the other companies that Mr. Colton has based his statistics on?

A. Yes, sir.

MR. COLTON: And this table was prepared in the same general way, at the request of the United States Steel Corporation?

MR. SEVERANCE: Mr. Winslow himself prepared it. Mr. Winslow is an employee of the Steel Corporation. It was prepared right here in the office yesterday. It was simply to save them work. We wanted this table, and they were very busy getting up statistics for you, and they could not prepare it themselves, and to assist the gentlemen here, we had Mr. Winslow prepare this table, and Mr. Gray checked it over to see that it was correct.

By MR. SEVERANCE:

Q. Is that correct, Mr. Gray?

A. Yes. Now, for instance, on page 23 of the annual report of the Steel Corporation for 1904, you will find 1,021,672 tons of various products were shipped during the year 1904

for export, and so on all the way through, you will find for each year that those things are given in those reports.

MR. COLTON: I will ask to have my objection read.

(The objection was thereupon read by the stenographer.)

MR. COLTON: And I also object so far as the figures coming from the annual reports of the United States Steel Corporation are concerned, that they are not made to the American Iron and Steel Association for statistical purposes, and it is not shown that this witness has any special connection with those figures.

MR. SEVERANCE: I will state, for the information of counsel, that if he insists upon the objection he has just made, we would be very glad to put an officer of the Steel Corporation on the stand to verify those figures. We expect to do it anyway, and go fully into the export trade. And incidentally, I will ask you this question: Have you the 1905 statistics there? They are presented to the iron trade on June 30, 1906.

MR. COLTON: Yes, I have.

MR. SEVERANCE: Look at page 15. I would like to have identified as Defendant's Exhibit No. 21, the statistics of the American and foreign iron trades for 1905, presented to the members June 30, 1906.

(The book referred to was marked "Defendant's Exhibit No. 21, for identification.")

By MR. SEVERANCE:

Q. I show you this Exhibit No. 21, Mr. Gray, and ask you if that is the book of statistics and the report to the members, of that date?

A. Yes, sir.

Q. And did you assist in the preparation of this, as in all the others?

A. Yes, sir.

Q. Both in the general review of the American Iron Trade, written by Mr. Swank, and the figures?

A. They have all been verified by me.

Q. And did those statements represent your understanding of the situation at that time?

A. At that time; yes, sir.

MR. SEVERANCE: I offer in evidence, from the volume just identified, the following, beginning at the last line on page 14, and extending over onto page 15:

"One of the notable features of the iron trade of this country in 1905 was the great increase that took place in that year in our exports of iron and steel, notwithstanding the active home demand for these products. In 1904, when this demand was far from being satisfactory to our manufacturers, when prices were low, and customers, whether at home or abroad, were badly wanted and diligently sought for, we exported iron and steel products valued at $128,553,613, exceeding the exports of any year since 1900; but in 1905 we exported iron and steel products valued at $142,928,513, an increase over 1904 of $14,374,900. Much of this increase was due to the systematic activity of the United States Steel Corporation in pushing its wares into foreign markets. In 1905 it exported 953,858 gross tons of iron and steel in many forms."

(The extract so offered and identified was thereupon marked "Defendant's Exhibit No. 21, December 17, 1912.)

By MR. SEVERANCE:

Q. Was that the fact at that time, as you understood it?

A. Yes, sir.

MR. COLTON: I object to the statements therein, other than the statistical statements, as not shown to have any basis, and that this witness is not shown to have any special knowledge of anything except statistics.

By MR. SEVERANCE:

Q. Let us see whether you know anything except statistics. Were you in constant touch with the iron and steel trade, and the men in that trade, and have you been for twenty years past?

A. Yes, sir.

Q. And familiar with the movements of business in that line?

A. Yes, sir.

Q. That has been your life work, has it not?

A. That has been my life work; I have not engaged in anything else since 1887.

Q. And that has involved examination of the export business of the iron and steel manufacturers of this country, as well as the local business, has it not?

A. Yes, sir.

Q. And you have endeavored in every way possible to keep yourself posted on that?

A. Yes, sir.

Q. And to make yourself a genuine expert in that line?

A. I try to.

By Mr. Colton:

Q. Mr. Gray, you testified in respect to the supplement to the Iron and Steel Directory, to the preface there on page five, which contains numerous statements. Are you familiar with the machinery contracts that the American Tin Plate Company entered into?

A. No, sir; I am not familiar with them. I have read concerning the testimony that has been produced.

Q. Are you familiar with the various contracts that the American Bridge Company entered into with the stockholders and other vendors of the various plants acquired by it, whereby the vendors bound themselves to stay out of business for a period of years?

A. I am not familiar with it. I recall at the time having read that in the newspapers. I know something about the plants and the plants that were acquired by the American Bridge Company. You will find those listed in that very supplement.

Q. Are you familiar with the various contracts that existed at that time, such contracts as between the Lorain Steel Company and the Carnegie Steel Company, whereby the Carnegie Steel Company was not to manufacture girder rails, in response to the payment of a certain sum of money?

A. No, sir; I know nothing of it.

Q. Are you familiar with the fact that the Illinois Steel Company was paid a large sum of money, along about 1899, not to manufacture cotton ties?

Mr. Severance: I object to that as indefinite.

By MR. COLTON:

Q. Was paid a large sum of money by the American Steel Hoop Company, then.

MR. SEVERANCE: Objected to as immaterial and indefinite.

By MR. COLTON:

Q. To wit, $150,000 a year?

A. I know nothing of it.

Q. Then you are not familiar with the inside history of these consolidations, are you?

A. I know nothing about the inside history.

Q. Nor the manner in which they obtained business?

A. I know nothing about that.

Q. Nor the purposes for which they were formed?

A. Well, I presume I know something about that; that is, I know they were formed for manufacturing purposes, but I have no inside information concerning their formation.

Q. And other than your statistics show, as to how far they sought to obtain a monopoly of the entire industry?

A. No.

Q. You know nothing about that?

A. No.

MR. COLTON: That is all. I have no further witnesses today.

MR. SEVERANCE: You have no further testimony at this time?

MR. COLTON: Not at this time.

(Whereupon, at 4:10 p. m., the hearing was adjourned subject to agreement of counsel.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1919

No. 4[redacted]1[redacted]6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 8.

PLAINTIFF'S TESTIMONY.

FILED MAY 12, 1916.

(25292)

VOLUME VIII.

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STIPULATIONS.

Stipulation with regard to printing extract from Iron and Steel Works Directory for 1908 (Government Exhibit No. 340) 2970

THIRTY-SEVENTH DAY.

OFFICES OF THE OUTLOOK COMPANY,
287 Fourth Avenue, New York.

WEDNESDAY, JANUARY 22, 1913.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

THEODORE ROOSEVELT

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. DICKINSON:

Q. Please examine this letter, Col. Roosevelt, and state whether or not you wrote it, and whether that is your signature.

A. That is my letter and my signature.

Q. Do you now recall the contents or would you prefer reading it?

MR. LINDABURY: Is this the letter to Mr. Bonaparte?

THE WITNESS: This is the letter to Attorney General Bonaparte of November 4th, 1907, signed by me.

By MR. DICKINSON:

Q. Please state whether or not the statements in that letter, which you state in the letter were made to you by Mr. Frick and Judge Gary were, in fact, made at that time by those gentlemen to you.

A. They were. The statements in the letter are correct.

Q. State whether or not that letter was dictated by you in their presence.

A. That was dictated by me in their presence.

Q. Did they raise any objections to any of the statements made by you in the letter at the time that you dictated it?

A. None whatever. On the contrary, they signified, in some method, their acquiescence in the statements that I made.

MR. DICKINSON: I offer that letter in evidence.

(The letter referred to was thereupon marked "Government, Exhibit No. 339, January 22, 1913," and will be found in the Volume of Exhibits.)

MR. DICKINSON: That is all, gentlemen.

CROSS EXAMINATION

By MR. LINDABURY:

Q. Had you been informed before that interview of the situation in New York, Mr. Roosevelt?

A. In general, and largely in detail, I had been informed and was kept informed of it continuously.

Q. You appeared before the Stanley Investigating Committee, did you not, and testified regarding the situation in New York and the interview with Messrs. Frick and Gary?

A. I did.

Q. I call your attention to your testimony on page 1372 of the record of the Stanley Committee hearings, in which you said:

"I had already heard from New York that certain of the big bankers were urging the Steel Corporation to acquire the Tennessee Coal & Iron properties so as to save certain Trust Companies, which they mentioned, from disaster."

Do you remember giving that testimony?

A. I do.

Q. And you were so informed, I take it?

A. I was so informed.

Q. On page 1375 you testified:

"I ought to say that from New York I had been told by banker after banker that the Tennessee Coal & Iron securities were valueless as securities that counted in that panic, and before Mr. Frick or Mr. Gary had said anything to me, they were expressing to me the earnest desire that the big institutions, or I will not say 'big,'—the threatened institutions—should have substituted for the Tennessee Coal & Iron securities, securities that would be of immediate value in stopping the panic. I do not give that as a statement of fact, but it was what was said to me by the bankers, and without contradiction by the bankers at the time."

Do you remember giving that testimony?

A. I remember giving that testimony.

Q. And that statement was, of course, correct?

A. And that statement was correct.

Q. Do you remember, Col. Roosevelt, that a few days after that interview a letter was submitted to you by the Secretary of State that had been written to him by Judge Gary relating to the interview?

A. Was the Secretary of State Mr. Root?

Q. Mr. Root. I will call your attention to it in a moment. I call your attention to page 138 of the Stanley record in which is printed first a letter from Judge Gary under date of November 7th to Mr. Root, a reply by Mr. Root under date of November 11th, a further reply under date of November 20, in the latter of which is contained a letter from Mr. Root to you, with an appended letter, under date of November 19th, from you to Mr. Root. Please look over that correspondence and see if you recall it.

A. I recall that correspondence.

MR. LINDABURY: Judge Dickinson, you are familiar with this and it is in the record. Will you consent that this be put in at this stage in the place of the original letters?

MR. DICKINSON: Yes, sir.

MR. COLTON: Subject to correction. I can get the originals.

MR. LINDABURY: Subject to comparison and correction. Yes.

MR. DICKINSON: I will enter the general objection of irrelevancy and incompetency.

MR. LINDABURY: You do not object to them because they are copies?

MR. DICKINSON: No. I do not object to them because they are copies, but I enter the general objection as to relevancy and competency.

MR. LINDABURY: I understand.

THE WITNESS: I am not certain that it is verbatim, but I know it is substantially correct.

MR. LINDABURY: Then, under that stipulation, I offer:

First, the letter on page 138 of the Stanley record, dated November 7th, 1907, signed E. H. Gary, and directed to "My dear Mr. Secretary."

Second, a letter dated November 11th, 1907, signed "Elihu Root," directed to "My dear Mr. Gary."

Third, a letter dated November 20, 1907, signed "Elihu Root" addressed "Dear Mr. Gary."

Fourth, a letter dated November 11, 1907, signed "Elihu Root", addressed "Dear Mr. President".

Fifth, a letter dated November 19, 1907, signed "Theodore Roosevelt", addressed, "My dear Mr. Secretary".

(The papers referred to were marked Defendants' Exhibits Nos. 22, 23, 24, 25 and 26, January 22, 1913.)

BY MR. LINDABURY:

Q. I call your attention, Col. Roosevelt, to an excerpt from a letter printed on page 142 of the Stanley record, purporting to have been written by Mr. Bonaparte, then Attorney General, to a Committee of Congress that had called upon him for the correspondence on file in his department relating to this transaction. The excerpt from that letter

printed here reads as follows: "On November 4th, 1907, the President addressed to me a letter of which I enclose a copy——

A. That was the letter about which I have already testified.

Q. Undoubtedly. "At the time of the visit to him by Messrs. Frick and Gary to which reference is made in this letter, I was absent from Washington, but after the letter had been written and before it reached me I had a brief conversation with the President, in which I was informed in substance of the facts stated more in detail in the letter itself. In this conversation I advised the President that so far as the Department of Justice was informed, no reason existed to believe that the United States Steel Corporation or its officers, directors or stockholders were subject to prosecution or civil action under the Sherman Anti-Trust Law, and that supposing such to be the fact the information conveyed to him by Messrs. Frick and Gary did not materially alter the existing situation." Do you remember receiving that advice from the Attorney General?

A. I do.

Q. And did you testify before the Stanley Committee that your statement to Messrs. Frick and Gary that you saw no reason why you should interfere was based upon the understanding that no other cause existed for prosecuting the Steel Corporation under the Sherman Act?

A. My memory is that I so testified.

MR. DICKINSON: Let me see that extract.

MR. LINDABURY: I have not it before me. I am trusting to my memory of it. I can find it later on.

MR. DICKINSON: I enter an objection to that statement as to the testimony given by Col. Roosevelt before the Stanley Committee unless the original or published proceedings showing that, are produced. My recollection does not go to that extent. It may be that way, but I do not recollect it.

MR. LINDABURY: We will look up the testimony.

MR. DICKINSON: I enter an objection to the extract from the letter from the Attorney General on the ground of being incompetent and irrelevant.

MR. SEVERANCE: You do not object on the ground the whole letter is not offered?

MR. DICKINSON: No, on account of the subject matter.

Q. At any rate, it is your recollection, is it not, that was your understanding of the situation at the time?

A. It was. Either I testified to that effect before the Stanley Committee, or it was my understanding at the time in any event, whether I testified or not.

Q. You realized, did you not, that if you had informed Messrs. Frick and Gary that in your opinion the Steel Corporation was subject to prosecution or dissolution under the Sherman Act, either because of its organization or its practices, they would not have gone on with the contemplated acquisition of the Tennessee Coal & Iron Company?

A. I did.

Q. One of the departments of the Government under your direction had undertaken an investigation of the Steel Corporation some years before this date, had it not,—I think Mr. Garfield's department?

A. The Bureau of Corporations?

Q. I suppose so, yes.

A. I remember that the Bureau of Corporations,—I do not know whether it was under Mr. Garfield or Mr. Smith,—investigated the workings of the Steel Corporation.

Q. And I suppose reported to you from time to time?

A. Undoubtedly. You understand I cannot say that they reported to me anything about the Sherman Anti-Trust Law, the Bureau of Corporations—I do not remember whether they mentioned that or not. I remember perfectly that they reported to me about the Steel Corporation and the Standard Oil, and drew a very sharp distinction between them; and that they reported to me favorably about the Steel Corporation and unfavorably about the Standard Oil Corporation,

on the points which their investigation covered, but I do not recall in detail all the subject matter of either report. Doubtless the reports are filed.

MR. DICKINSON: Then I object to any verbal statement in regard to the contents of the reports, the reports themselves being the best evidence.

Q. I show you a letter to Judge Gary purporting to be signed by Mr. Garfield, dated November 9th, 1905; I take it you are acquainted with the signature of Mr. Garfield, are you not?

A. I am.

Q. You remember that letter?

A. I do.

Q. I show you the enclosure with that letter and will ask you to read it, as I wish to question you about the matters referred to.

A. (Witness reads enclosure.)

Q. Are you able to say whether or not that interview took place as recorded in Mr. Garfield's memorandum substantially as he states it?

A. Yes.

MR. LINDABURY: I will now ask to have the letter from Mr. Garfield to Judge Gary marked for identification. I will have it marked in evidence if you do not object to the offer at this time.

MR. DICKINSON: I would just as soon you would offer it now as at any other time. Of course, I except to the offer.

MR. LINDABURY: Then I will offer it in evidence.

MR. DICKINSON: You offer the memorandum also?

MR. LINDABURY: Yes; as they are separate, I want to have a separate mark on them.

MR. DICKINSON: We except to the letter and to the memorandum.

MR. LINDABURY: I have not offered the memorandum yet, but I will.

MR. DICKINSON: The letter is excepted to as being incompetent and irrelevant.

(Letter referred to received and marked "Defendants' Exhibit No. 27, January 22, 1913.")

MR. LINDABURY: I will next offer the memorandum accompanying the letter of Mr. Garfield of November 9th, 1905, the memorandum itself being dated November 4th, 1905, and ask that it be marked in evidence.

MR. DICKINSON: That is objected to as irrelevant and incompetent.

(Memorandum referred to received and marked "Defendants' Exhibit No. 28, January 22, 1913.")

Q. This memorandum mentions Secretary Metcalf as being present at the interview. Who was he and what office did he hold in the Government at that time?

A. What date was that?

Q. November 4th, 1905; he was Secretary of Commerce and Labor, I believe?

A. Yes, Secretary Metcalf was Secretary of Commerce and Labor first under me, and then Secretary of the Navy, and I am confident that at that time he was Secretary of Commerce and Labor, but I have forgotten the exact date of the change.

Q. Commissioner Garfield, the gentleman who prepared the memorandum, is mentioned as having been present and is characterized as Commissioner; what office did he hold then?

A. Mr. Garfield was then Commissioner of Corporations.

Q. Do you remember that an investigation was undertaken immediately after this meeting by the Commissioner of Corporations, Mr. Garfield?

A. I remember it was undertaken about that time.

Q. I call your attention, Col. Roosevelt, to an article appearing under your name in The Outlook Magazine, of November 18th, 1911, in which you incorporated a letter to you from Mr. Garfield.

MR. DICKINSON: The reference to a magazine article is objected to.

MR. LINDABURY: One moment. I have not finished my question.

Q. (Continuing) In the course of which Mr. Garfield wrote you: "As you will remember at our first conference with Judge Gary, the Judge stated that it was the desire and purpose of the company to conform to what the Government wished, it being the purpose of the company absolutely to obey the law both in spirit and letter."

"Throughout the time I had charge of the investigation and while we were in Washington I do not know of a single instance where the Steel Company refused any information requested, but on the contrary aided in every possible way our investigation." Do you remember that statement in Mr. Garfield's letter.

MR. DICKINSON: The reading of any part of an article in The Outlook is objected to, as incompetent and irrelevant; the reading of the letter is objected to as being a copy and not the original.

A. I remember that letter and the facts as set forth in that magazine article of mine are correct.

By MR. LINDABURY:

Q. But I am asking particularly now about this. Do you recall that, so far as you were informed, as President, or as reports were made to you or information came to you in any way, the statement of the attitude of the corporation towards the investigation was as recorded in this letter by Mr. Garfield?

A. Yes, sir.

MR. DICKINSON: I except to that as being general, not calling for particular statements and dates or conversations and events.

By MR. LINDABURY:

Q. And do you remember that at the interview to which

Mr. Garfield alludes, Judge Gary did make the statement which he here records as to the attitude of the Steel Corporation? I will let you read it again, to refresh your recollection on the subject.

MR. DICKINSON: That is objected to as irrelevant and incompetent, as not proper to present to the witness to refresh his recollection.

THE WITNESS: I remember Judge Gary making such a statement. I could not now say whether it was at the first meeting or not, but I have no question that Mr. Garfield's memory is correct about it.

By MR. LINDABURY:

Q. Did he not make it to you more than once?

A. On several different occasions.

Q. When did you take office as President of the United States? Do you remember the date now?

MR. SEVERANCE: It was in September, 1901, was it not?

THE WITNESS: It was in September, 1901. I have forgotten the exact date. Do you remember, Judge?

MR. DICKINSON: No; I do not.

MR. LINDABURY: It was about that.

THE WITNESS: I know it was in September, 1901.

By MR. LINDABURY:

Q. How soon thereafter, so far as you recall, was your attention called to the existence of operations of the Steel Corporation? Perhaps you were more or less familiar with them at the time, it having been organized the preceding April.

A. I could not tell that.

Q. But it is a fact, that through published statements, newspaper advertisements and annual reports, the government was made more or less acquainted, from an early date, with the operations of the company and its organization; is it not?

A. Mr. Lindabury, I could not say at what date the government was made acquainted with the operations of the Steel Company, excepting through reading the newspapers. I believe it was not until I succeeded in getting the Bureau of Corporations Law through Congress, that we got any official whose business it was to himself, on his own initiative, take up the work of familiarizing himself with what the big corporations were doing; and as far as I remember it was not until Mr. Garfield undertook his work as Commissioner of the Bureau of Corporations that I had my attention specifically called, in a governmental capacity, to the Steel Corporation and its operations.

Q. Do you recall when he became Commissioner of Corporations?

A. It was in either 1903 or 1904. Do you happen to recollect, Judge?

MR. DICKINSON: No; I do not.

MR. LINDABURY: I think that is about the date.

THE WITNESS: That is about the date. I cannot remember the exact date.

By MR. LINDABURY:

Q. Do you remember, referring back to Mr. Garfield's letter which you published in your Outlook article, that he reported to you from time to time, as the investigation of the Steel Corporation went on, substantially as he states in his letter with regard to the facilities it furnished him?

A. I do so remember. He reported it to me, and he stated it to me verbally.

Q. So that, when the interview with Messrs. Frick and Gary occurred on the 4th of November, 1907, you were pretty familiar with the situation of the Steel Corporation, were you not? I mean you were familiar with its organization and its general practices?

A. I was familiar with all that the Bureau of Corporations had told me.

Q. You, I suppose, do not know, in any detail, the information furnished from the records of the Steel Corporation to the Bureau of Corporations at that time?

A. Not in detail.

Q. How long did Mr. Garfield continue as Commissioner of Corporations? He became afterwards Secretary of the Interior, I believe.

A. I could not tell you how long. I should say two or three years. He was succeeded by Mr. H. K. Smith, Mr. Garfield taking the position of Secretary of the Interior in my Cabinet

Q. I think there are only one or two other questions that I wish to ask.

Col. Roosevelt, I started to read to you a portion of the November 18th Outlook article.

MR. DICKINSON: I want to enter an objection to that.

MR. LINDABURY: Before I have read it?

MR. DICKINSON: Yes; because I want to except to the reading of it.

MR. LINDABURY: Very well.

MR. DICKINSON: The reading of the article from The Outlook is excepted to as irrelevant and incompetent, and as improper cross examination.

MR. LINDABURY: You do not know what part I am going to read.

MR. DICKINSON: I do not care. I make my objection to the reading of it.

By MR. LINDABURY:

Q. I read from the article referred to:

"It has been alleged, on the authority of the Government officials engaged in carrying on the suit (referring to the present suit) that as regards this transaction (referring to the taking over of the Tennessee Coal & Iron and the interview of Messrs. Gary and Frick with you) I was misled by the representatives of the Steel Corporation, and that the

facts were not accurately or truthfully laid before me. This statement is not correct. I believed at the time that the facts in the case were as represented to me on behalf of the Steel Corporation, and my further knowledge has convinced me that this was true. I believed at the time that the representatives of the Steel Corporation told me the truth as to the change that would be worked in the percentage of the business which the proposed acquisition would give the Steel Corporation; and further inquiry has confirmed me that they did so. I was not misled. The representatives of the Steel Corporation told me the truth as to what the effect of the action at that time would be, and any statement that I was misled, or that the representatives of the Steel Corporation did not thus tell me the truth as to the facts of the case, is itself not in accordance with the truth."

Is that still your understanding of the situation?

A. It is.

Q. And you so testify?

A. And I so testify.

MR. LINDABURY: That is all.

MR DICKINSON: This is excepted to because the statement read to the witness refers to investigations and information acquired by the witness which is not set out in the letter and which does not appear in the record, and is, therefore, incompetent, irrelevant and improper cross examination.

MR. LINDABURY: One other question now occurs to me.

By MR. LINDABURY:

Q. I believe you testified before the Stanley Committee, Col. Roosevelt, that for a day or two prior to the visit of Messrs. Frick and Gary, you were in hourly communication with New York, and, in that way, understood the situation in New York before those gentlemen called upon you at all. You did so testify?

A. Yes.

Q. And such was the fact?

A. And such was the fact.

RE-DIRECT EXAMINATION.

By Mr. Dickinson:

Q. Colonel, did you read the petition of the Government as stated in this case?

A. I read it in the newspapers, yes.

Q. Is that the only thing you read?

A. As given in the papers, yes.

Q. You do not know that that was an authentic copy?

A. I do not.

Mr. Lindabury: If any doubt exists as to whether he was right with reference to the real allegations, we will relieve that.

By Mr. Dickinson:

Q. I will ask you, Colonel, if the particular matter to which your mind was addressed at that time was not the condition of things in New York, and the relief that this supposed action would bring in New York?

A. There were two matters to which my attention was especially directed. One was the condition of things in New York, the relief that the action would bring, not merely to New York, but throughout the entire country—just as much in Louisiana and Minnesota and California as in New York. That was one thing. The other thing to which my attention was particularly directed was the percentage of holdings that the Steel Corporation had, and had had and would have after the Tennessee Coal & Iron properties were acquired.

Q. Were these the controlling and prominent features that operated on your mind in coming to the conclusion that you did?

A. These were the two chief matters that I had in my mind.

Q. At that time was any information given you as to the formation of the Steel Corporation, the character of the subsidiary companies that had been brought under its control, and how those companies were formed?

A. No.

Q. Nothing said on that subject?

A. Nothing was said on that subject.

Q. Did you know at that time or at any time previous thereto, that subsidiary companies of the Steel corporation had been engaged in pools or arrangements by which they agreed with their competitors as to the market prices that should be charged by them for the class of products they were making?

A. As far as I know no such information was given to me.

Q. Did you have any knowledge at that time or previous thereto that the Steel Corporation either directly or through the action of its subordinate companies had controlled for a number of years subsequent to the formation of the Steel Corporation, through pools and agreements, the price of commodities by joint action with their competitors?

MR. LINDABURY: I object to the question upon the ground that there is no evidence in the case to support it.

MR. DICKINSON: The evidence is absolute and conclusive.

A. I had no such knowledge.

Q. Did you have at that time or at any time previous thereto any knowledge of such a combination known as the Structural Pool by which the prices and output of commodities of that character were controlled by competing companies?

A. I do not remember ever hearing of such a matter.

Q. Or a rail pool?

A. Or of any such pool.

Q. Did you or not know at that time that the American Tin Plate Company, which was one of the companies taken over by the United States Steel Corporation had, when it was formed, brought under its control through a holding company fully ninety per cent of all of the output of tin plate made in the United States?

A. No such allegation was ever brought to my attention.

Q. And no such information?

A. No such information, allegation or statement; nothing about it was ever brought to my attention.

Q. Did you know anything at all about the formation of the American Bridge Company and the bringing under control through a holding company of competing companies who had been engaged in competition in State, inter-state and foreign commerce?

A. Is that a Steel Corporation company?

Q. One of the subsidiaries of the Steel Company.

A. None of the matters about which you speak had ever been brought to my attention by any bureau of Government or in any other way.

Q. What character of information did you have at that time in regard to the formation and practices of the United States Steel Corporation or its subsidiaries; did you have anything further than the percentage of output?

A. I had no knowledge save as I had it from the Bureau of Corporations and save as there may have been comments made to me by the Attorney General on the statements of the Bureau of Corporations.

Q. But none of them related to the matters that I have questioned you about particularly?

A. Nothing said to me by either the Department of Justice or the Bureau of Corporations, had any reference to the matters of which you speak.

Q. At that time did you know the extent of the holdings of the Tennessee Coal, Iron & Railroad Company in iron ore and in coal deposits?

A. I cannot say that I knew the exact extent.

Q. Did you know at that time that the Tennessee Coal, Iron & Railroad Company had approximately sixteen blast furnaces?

A. I do not now remember the number of blast furnaces, but I had taken the trouble to inform myself of its holdings, and had taken care to inform myself roughly of the extent of its holdings.

Q. Roughly?

A. Yes.

Q. What was the result of that information; what knowledge did you have?

A. The knowledge that I had was that the Steel Corporation had some years previously possessed nearly sixty per cent of the holdings of the steel industry in the country, that its percentage had shrunk steadily; that the addition of the Tennessee Coal & Iron Company, which was something in the nature of four per cent, somewhere between two and four per cent, I have forgotten the exact amount, somewhere around there, did not bring up the percentage of holdings of the Steel Corporation to what it had been a few years previously.

Q. Then it was a question of comparative percentages based upon the then output?

A. Based upon the then output.

Q. And did not cover information in regard to the extent of their properties and the potentialities of those properties if developed?

A. Of course it was impossible to take into account the potentialities that might or might not be developed.

Q. Did you have any information then as to the Tennessee Coal & Iron Company, I mean as to the coal capacity and the output of the mines of the Tennessee Coal, Iron & Railroad Company, or was it confined merely to the steel product?

A. My attention was certainly confined mainly to the steel.

Q. I believe your letter speaks——

A. Excuse me. I may have considered the coal, too, but my attention was confined mainly to the steel.

Q. I think your letter speaks of 60 per cent of the steel, if I recollect.

A. You mean my letter to the Attorney General?

Q. Yes, your letter of November 4th. This letter says: "They further informed me that as a matter of fact the policy of the company had been to decline to acquire more than 60 per cent of the steel property, and that this purpose has been present for several years past with the object of preventing these accusations, and as a matter of fact their proportion

of steel property has slightly decreased so that it is below the 60 per cent, and the acquisition of the property in question will not raise it above 60 per cent." That referred to the steel output?

A. To the steel output.

Q. At that time?

A. Yes. I believe that it was only the steel output that I was considering. If I considered the coal it was entirely a secondary matter.

Q. And you do not recall now that you knew at that time that they had an annual capacity of 5,700,000 tons of coal, the Tennessee Company?

A. I do not remember about the coal.

Q. And you do not remember the number of coking plants that they had in operation at that time?

A. I do not.

Q. Nor the quantity of iron ore—I am distinguishing now between iron ore and the finished steel product—your attention was not directed to the extent of the iron ore product at that time, was it?

A. I should think it was directed to the iron ore products, not to the extent of the iron ore beds, but to the iron ore products.

Q. By that you mean output?

A. As I say, my attention was not—I am merely mentioning this so as to give you a full answer—the extent of the iron ore beds was not a matter that I considered at that time, but I believe the output of iron ore was.

Q. Was the extent of their property in iron and coal a subject matter of consideration at that time with you?

A. It was not a subject matter of consideration. Judge, I believe that the question came up, I won't say that the question came up, I would say that it was mentioned that there were quantities of iron ore beds that never would be developed at all, if some organization capable of developing them did not get hold of them.

Q. Did you know at that time that the Tennessee Coal,

Iron & Railroad Company was the largest holder of commercial iron ore in the United States outside of the Steel Corporation?

A. No; I had heard it stated that it was a large holder of such ore, and wholly incompetent to develop it or do anything with it, and that the ore would not be developed and nothing would happen in connection with it if some company capable of developing it did not get hold of it.

Q. From whom did you get that information?

A. I cannot tell you now. It was a matter of general statement among all those people most competent to judge at that time; I am not volunteering this; you asked me what I heard.

Q. You did not know then at that time that the Tennessee Coal, Iron & Railroad Company was paying dividends, did you?

A. I did not know anything about it; I knew that its stock was regarded as so very poor that the banks that had it did not regard themselves as strengthened by having it.

MR. LINDABURY: You don't mean by that question to imply that it was paying dividends out of earnings?

MR. DICKINSON: They had no right to pay dividends any other way.

A. (Continuing) My knowledge was simply this, that it was a matter of general opinion among experts that the Tennessee Coal & Iron people had a property which was almost worthless in their hands, nearly worthless to them, nearly worthless to the communities in which it was situated, and entirely worthless to any financial institution that had the securities the minute that any panic came, and that the only way to give value to it was to put it in the hands of people whose possession of it would be a guarantee that there was value to it.

Q. And your understanding then was that at that time it was in the hands of people who were financially weak and who were not able to develop it, is that so?

A. My understanding was that the people had not developed it, and that there was nothing in the way the business had been carried on, or was then carried on, which gave any

promise of such development, and that was not based on my opinion. It was based on the fact that the banks holding the securities which ought to have been capable of judging, had that information.

Q. And that was largely the basis of your conclusion, the attiture of the banks?

A. That was largely the basis of my conclusion.

Q. The attitude of the banks?

A. The attitude of the banks and of all of the experts who spoke to me on the subject.

Let me also add this: That was in panic times when the men were giving me the best judgment that they knew how to give, because the wrecking of business conditions throughout the country or the non-wrecking of them, depended upon the accuracy of their judgments, and it was a matter of life and death to them to give good judgment.

Q. Did you know that, at that time, the Tennessee Coal, Iron & Railroad Company was controlled by men who were strong financially, and who were developing it and had then spent or were in process of spending eight million dollars in developing it?

A. Judge Dickinson, I have told you, already, what I knew. I knew that the judgments of those men competent to express judgment was that those securities were comparatively worthless; so worthless that the banks could not sustain themselves against attack as long as their securities only represented the Tennessee Coal & Iron people and could sustain themselves against attack as soon as they represented a stronger financial firm.

Q. But did you know that the men who were then in control were spending about eight million dollars in developing this property?

A. I knew nothing about what they were spending.

Q. Did you know that prior to this interview, somewhat prior thereto, but within a year, the United States Steel Corporation had certain experts investigate this property and had received reports upon it?

A. I knew nothing of it; but from my knowledge of the

Steel Corporation I should have taken it for granted that they were not buying a pig in a poke.

Q. Did you know, Col. Roosevelt, that shortly prior to this time the Tennessee Coal, Iron & Railroad Company had placed an order for 157,000 tons of steel open-hearth rails with the Harriman lines?

A. I knew nothing of such details at all. I have given you, Judge, all that I can remember.

Q. You have given me what you know; and I wanted to find out about a few things that you did not know. Did you know that, within a short period——

A. (Interposing) You say you wanted to find out the things I did not know. There may be the implication in that that the knowing of those things would have altered my action. Not one thing could have been known by me about that company that would have altered my action. None of these things that you recite had the effect of a snap of the fingers on the situation as I have described it.

Q. Did you know, Colonel, that within a short period, in less than sixty days' time, the United States Steel Corporation had loaned upon the stock of the Tennessee Coal, Iron & Railroad Company upwards of a million dollars?

A. You mean subsequently?

Q. No; before their interview with you. And that it had been done under contracts by which if the loan was not paid they could take over the stock?

A. As far as I know I did not know it. As far as I can recollect, I did not.

MR. LINDABURY: If you wish the Colonel's judgment on a situation, you should give it all to him, not a part of it, Judge Dickinson.

MR. DICKINSON: I do not know what you mean.

MR. LINDABURY: If you wish the Colonel's judgment with regard to that loan, you should give all the circumstances, not some of them.

THE WITNESS: I would not express my judgment on it, anyhow. I have explained what it was that I founded my judgment upon. I have explained that in my opinion now that judgment was correct, that I acted in the only way that it

was proper to act at the time; and if all those facts had been known to me, it would not have altered my action in the least; and that none of these facts have any bearing upon the situation as it was presented to me, and as I believe now, and am sure now, it existed. I cannot put it any stronger than that.

By Mr. Dickinson:

Q. Had the Bureau of Corporations made any reports to you in regard to the inner workings of the United States Steel Corporation and any relations between it and its competitors prior to that time?

A. I do not remember that their reports covered any relations between it and its competitors.

In answer to your question, Mr. Lindabury, about my knowledge of the Steel Corporation, I said I had knowledge such as the Bureau of Corporations gave me. There were points that they did not report on; but before I left the presidency, I was taking steps to have an investigation of labor conditions under the Steel Corporation and other kindred corporations made; but, as far as I remember, this Bureau of Corporations had made to me no such reports. I wish to emphasize the fact that my attention was only called to certain matters.

Q. The Bureau of Corporations was then investigating, however? They were making an investigation?

A. At the time?

Q. At that time?

A. My memory is that they were.

Q. There is one other question I would like to ask you, Colonel. Of course, in your conclusion, you have disposed of it, but, at the same time, I would like to get the facts on the record.

Q. Did you or not know, at the time of that interview with Messrs. Frick and Gary, that the Tennessee Coal, Iron & Railroad Company were in process of constructing machinery and plants for the making of steel rails which had a capacity which would put them second or third of all the producers in the United States in the steel rail industry?

A. Judge Dickinson, I knew that for some time claims had been made as to what the Tennessee Coal, Iron & Railroad

Company were going to do, and statements had been made that they never would carry out what they were going to do. I had no personal knowledge as to which set of assertions contained most likelihood of being borne out by the results; but as I have said to you before, the judgment in the financial circle in the expert circles, of those whose judgment was best worth having, was much against the Tennessee Coal & Iron Corporation, and that their securities were not regarded as giving strength to any threatened financial institution that held them in the time of panic.

Q. That was the predominating question at that time, was it?

A. That was the predominating question. I consider that two questions predominated, as I have told you. You do not wish me to repeat them, do you?

Q. No. Then, outside of the question of prophecies and predictions as to what they would do, you did not know, actually, that they were then in process of constructing a plant or plants for the making of steel rails which would make them one of the largest producers of steel rails in the United States?

A. I was not actuated, as I have told you, by the prophecies and predictions made by either side.

Q. Or what they were actually doing in the way of construction at that time?

A. Or by what they were actually doing or actually said they were doing in the way of construction at that time.

I was dealing with a panic, and a situation where not merely 24 hours, but one hour, might cause widespread disaster to the public, and it was of no benefit to me to guess as to the accuracy of the forecasts of interested parties in stating what they intended to do with a corporation.

Q. You stated, in substance—I do not recall the exact words—that at that time you understood that there was no other cause upon which the United States Steel Corporation could be proceeded against than the one cited. To what extent was your mind then addressed to the question of these other causes, or what information was communicated to you on that subject?

A. You will have to look at my words. My impression is, however, that what I stated was that no information had been given me by any governmental authority tending to show that they ought to be proceeded against.

Q. Did you mean to say that you, at that time, had made a thorough investigation, and that there was no other cause, or merely that none had been brought to your attention?

A. I meant merely to say that neither Attorney General Knox, nor Attorney General Moody, nor Attorney General Bonaparte, during their respective terms of service as Attorney General, ever reported to me that any action ought to be taken against the Steel Corporation.

Q. And that was the extent to which you meant to express yourself on the point, was it?

A. That is the extent to which I meant to express myself.

Q. You did not mean to assert that you knew there was no other cause?

A. Of course, I never meant to assert anything of the kind.

Q. An investigation was going on then, for the purpose of ascertaining the facts, was it not?

A. An investigation was going on by the Bureau of Corporations, but I do not remember whether it was precisely on that point; because if it had been on that point, I think it would have been undertaken by the Attorney General's department.

Q. There had been no reports then?

A. No; there had been no reports under that.

MR. DICKINSON: That is all.

RE-CROSS EXAMINATION.

By MR. LINDABURY:

Q. An investigation had been going on for two years for the purpose of ascertaining the condition and operations of the Steel Corporation as provided in the Act of Congress?

A. Yes.

Q. And that was intended to develop the facts, was it not, with regard to the situation?

A. That is as I understand it.

Let me add this: As you have spoken of the investigation by the Bureau of Corporations, and as I only said what the Attorney Generals had reported to me, let me say that at that time neither Mr. Garfield, while he was chief of the Bureau of Corporations, nor Mr. H. K. Smith, while he was chief of the Bureau of Corporations, had ever said anything to me indicating that any action to dissolve the Steel Corporation should be had. I only mention that as you brought up the question of the investigation, Judge Dickinson.

MR. DICKINSON: Had they said anything one way or the other?

THE WITNESS: No; they had not said anything one way or the other.

MR. DICKINSON: Either that it should or should not?

THE WITNESS: I do not believe they had ever mentioned that matter to me.

By MR. LINDABURY:

Q. You were asked by Judge Dickinson with regard to pools in which he assumed that the subsidiaries of the Steel Corporation were parties with outside steel manufacturers. Do you remember hearing from Judge Gary or anybody else, at the interview of November 4, 1905, or the months preceding, that those pools, in so far as they were known of by Judge Gary or the Steel Corporation, were all broken up, through counsel employed for that purpose about a year before that time?

A. I certainly heard that; but whether I heard it at that time or not I cannot tell you.

Q. It was then or before, was it not?

A. It was then or before. About that time I was so informed.

By MR. DICKINSON:

Q. By whom were you informed?

A. I cannot tell you. I think it was by Judge Gary. It might have been by Mr. Garfield.

Q. But you do not know who informed you?

A. I do not. I merely remember being informed. And I

should not remember it now if it had not been for the question put to me.

MR. DICKINSON: The question and answer are excepted to as incompetent, irrelevant and hearsay.

(Whereupon a recess was taken till 2 o'clock P. M.)

AFTERNOON SESSION.

At the expiration of the recess the hearing was resumed in the Reference Room, St. Paul Building, 220 Broadway, New York.

WILLIAM E. COREY,

a witness produced on behalf of the United States, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Mr. Corey, where is your place of legal residence?

A. New York City.

Q. What is your age?

A. I am in my 47th year.

Q. Are you now connected with the United States Steel Corporation as an official?

A. No, I am a director.

Q. You are a director?

A. I am a director, but not an official.

Q. And a stockholder?

A. And a stockholder.

Q. You were an official of the United States Steel Corporation, were you?

A. Yes.

Q. Please state what offices you held with that company and during what periods?

A. With the Steel Corporation?

Q. Yes; with the Steel Corporation.

A. I was President of the Company from some time in 1903 until December 31, 1910.

Q. Before that with what company were you associated?

A. The Carnegie Company.

Q. Was that the Carnegie Company, Limited, or the Carnegie Company of New Jersey?

A. No; it was first the Carnegie Steel Company, Limited—I have really forgotten the details. It was Carnegie, Phipps & Company, the Carnegie Steel Company, Limited, and the Carnegie Company, I believe.

Q. The Carnegie Company, I believe, was the last next before its absorption by the United States Steel Corporation?

A. Yes.

Q. What position did you have with the Carnegie Company that was taken over by the United States Steel Corporation?

A. When it was taken over?

Q. Yes.

A. I was Superintendent of the Homestead Steel Works at that period.

Q. How long had you been in that position?

A. About six years.

Q. Were you a director in that company?

A. Yes.

Q. Were you a director of the company which that company took over?

A. I really cannot recollect those details.

Q. You had a Carnegie Company, Limited, did you not, and was not that taken over by the Carnegie Company of New Jersey?

A. Yes.

Q. What position did you have with the one that was taken over?

A. As I say, I was Superintendent of the Homestead Works, but I do not recollect whether I was of the other or not. Do you recollect, Mr. Dickson? I will ask Mr. Dickson, if you do not mind?

MR. DICKINSON: I do not object, if counsel do not.

MR. SEVERANCE: We do not object.

MR. DICKSON: I think you were a director of the large company as well.

THE WITNESS: I was a director of both companies, I think. I cannot be certain, but I think that is correct.

By MR. DICKINSON:

Q. How long had you been a director of those two companies?

A. Really, I am sorry I cannot answer that, Judge Dickinson. I think our records would show that. I think you will find that in the records of the minutes of the Carnegie Company, which I understand you have.

Q. I thought you knew and could answer without difficulty?

A. No, sir; I cannot.

Q. Of course, we can ascertain that fact.

A. Yes.

Q. I read to you, Mr. Corey, from the Minutes of the Carnegie Steel Company of May 11th, 1903, which are in evidence, Government Exhibits printed, Volume 2, Page 491;

"Purchase of iron for third quarter.

"MR. COREY: I should like to have the views of the Board as to the advisability of buying iron for the third quarter. There is understood to be about 65,000 tons in the market for the third quarter's delivery, and if we buy at this time, it will be largely for the purpose of preventing the furnace people from offering it around and thus demoralizing the market. If we could buy up all that is to be had, it would undoubtedly do a great deal to strengthen the situation. The price would be around $18.00 Valley.

"On discussion it was agreed that iron for the third quarter should be purchased on assurances from the furnace people that 65,000 tons was all the available iron for that quarter and that no more would be put on the market."

State whether or not that purchase was made, referred to in those minutes.

A. I could not state definitely that it was made, but I presume that it was, Judge.

Q. The expression was used that it would strengthen the situation. In what respect would that strengthen the situa-

tion? That is to say, how would it operate, and what effect would the purchase of that iron under those conditions, to wit, that the understanding was that that was all that was upon the market, and that no more would be put out, have?

A. Pig iron is recognized as the barometer of the steel trade. If that iron was purchased, it was expected that it would add stability to the prices of iron and steel products.

Q. That is, the finished products?

A. As well.

Q. State whether or not, at that time, that company had contracts for finished products upon a sliding scale, based upon the change in the market price of pig iron.

A. I presume that they had, because we had certain sliding scale contracts at all times.

Q. Would this have affected those contracts?

A. In what particular do you mean, Judge?

Q. I mean in this way, that if you had contracts to deliver billets over a certain period, and the price of them was to slide upon the basis of the rise and fall in pig iron, would the strengthening of the situation by such purchase as that have an effect upon the price that the purchasers under those contracts would pay for the finished products?

A. Yes sir.

Q. State whether or not the result of that would be to give your company a higher price for its pig iron that went into that product, so far as your ores have gone into pig iron manufactured by you which resulted in that product. Would it or not give you a higher price for those ores?

A. I do not believe I understand that question.

Q. It may be a little confused. I will ask the stenographer to read it.

(The stenographer repeated the question as follows:)

"Q. State whether or not the result of that would be to give your company a higher price for its pig iron that went into that product, so far as your ores have gone into pig iron manufactured by you which resulted in that product. Would it or not give you a higher price for these ores?"

A. No; it would not cause a higher price; it would cause the prevailing price.

Q. The prevailing price?

A. Yes. It would not advance the price, Judge. It would give us the price that was ruling at that period.

Q. At that time?

A. Yes, sir.

Q. Suppose, then, such purchases had not been made and on account of that there had been a lower prevailing price for pig iron, what would have been the result, then, upon those contracts?

A. In all probability we would have had a lower price.

Q. And the purchasers under those contracts would have paid a lower price for the finished production?

A. If the prices had gone down, yes.

Q. The effect then, of sustaining the price, was to maintain the price to the purchaser?

A. That was the object.

Q. That was the object of it?

A. Yes.

Q. Now, I will read you from page 492 of the minutes of the meeting of May 18th, 1903:

"MR. DICKSON: We have under option (a rather indefinite option, but good for several days at least) all the surplus iron of the Valley Association for the third quarter, amounting to about 55,000 tons at $19.00 Valley. We also have an option from W. P. Snyder on 30,000 tons for the same period, at the same price. I think if we should insist on $18.50 Valley, both would agree to it, but of course we want to pay them as much as the finished material end will stand. I talked with Mr. Willis King of Jones & Laughlins this morning, and he thinks $18.50 Valley would be sufficiently high to maintain finished material. He says they expect to be purchasers to the extent of about 10,000 tons during the fall. I do not think they could be persuaded to go in with us and buy at the same time, as their action will depend upon conditions later. I understand, too, that they intend putting in a new converter.

"MR. COREY: Are you sure that that will take up all the available iron?

"MR. DICKSON: As sure as we ever are. It seems that they always have some held back; however, they have both agreed to guarantee the price against themselves. I understand the matter will be discussed in committee at New York tomorrow."

Now what would have been the effect, Mr. Corey, upon the market price of iron if that purchase had been made and if that covered all of the available iron at that time in the market?

MR. SEVERANCE: Objected to as speculative.

Q. State whether or not the effect would be to maintain prices?

MR. SEVERANCE: I object to that as speculative and leading.

Q. Answer it please.

A. My opinion would be that the price of iron would have remained about at that figure.

Q. If that purchase had been made?

A. Yes.

Q. Was that or not the object of the purchase to maintain the price?

A. I presume so at that time, yes.

Q. Now I will read you from the same volume, extract from the minutes of the Carnegie Steel Company, page 509, a statement purporting to have been made by Mr. Dinkey, as follows: "It has always been the opinion of this Board, and I think of every one connected with the Corporation, that Carnegie Steel Company should be a buyer of pig iron so as to assist in controlling the price."

Please state, Mr. Corey, whether or not that had been and was the policy of the Carnegie Company.

A. At various times the Carnegie Company did buy in to endeavor to maintain the price of finished products.

Q. I read you, Mr. Corey, extracts from the minutes of the Executive Committee of the United States Steel Corporation May 5th, 1903, as they appear upon pages 970 et seq. Vol. III of Government Exhibits:

"Executive Committee Meeting Tuesday, May 5th, 1903. Present Messrs. E. H. Gary, Chairman, C. M. Schwab, George W. Perkins, E. C. Converse, William Edenborn, D. G. Reid, James Gayley.

* * *

"PURCHASES OF PIG IRON.

"FOR JULY, AUGUST AND SEPTEMBER, 1903.

"The President stated that he would like to obtain the views of the Committee in regard to the advisability of the purchase of about 30,000 tons of pig iron at $18.50 for the third quarter of 1903, and for which we would exchange coke at the rate of $3.00 per ton; that we will require about 100,000 tons in that quarter; that he believes we ought always to be buyers of some pig iron; that it would be better to even shut down some of our high priced furnaces and be purchasers; that the price of finished steel products being regulated by the price of pig iron, we ought not to be endeavoring to get the cheapest iron; that we ought to maintain the price by little purchases; that $1.00 a ton is such a little thing compared with the advantages we receive in the finished products; that if we had purchased pig iron there would not have been the present downward tendency in it.

"THE CHAIRMAN: I would not be in favor of making the purchase. The price for our coke should be $3.50. We have bookings enough now to justify us in the purchase of 30,000 tons for those months, but can we spare the coke? I do not think we ought to buy pig iron at prices considerably higher than the price will be when we need the iron. I would hope that the business conditions are such that next July and August we have to buy pig iron at $18.50, or $19.00 a ton, but I do not think it is necessary to buy it now. The price advanced from $16.00 to $21.00 because of its scarcity but the price of finished steel did not advance. I would like to see pig iron sift down to about $16.50 and stay there.

"MR. GAYLEY: The first contract made for coke was at $3.50. The Inter-Company price is $2.60 plus. I think we ought to hold the price of pig iron at $18.50 and that it is

important for us to stay in the market and buy at $18.50; and rather than miss the deal I would recommend the exchange on the basis of $3.00 a ton for coke.

"Upon motion duly seconded, it was voted that the matter be placed in the hands of the President to act.

"Executive Committee Meeting, Tuesday, May 12th, 1903.

"Present: Messrs. E. H. Gary, Chairman, C. M. Schwab, Charles Steele, E. C. Converse, William Edenborn, James Gayley.

* * *

PURCHASES OF PIG IRON.

"In regard to the proposition to purchase pig iron for the third quarter of this year, the President stated in substance: That he believes we ought to purchase 75,000 to 100,000 tons at the best price we can; that this would be advantageous at present prices because of the large amount of finished material we sell at prices dependent upon the price of pig iron; and therefore we ought not to endeavor to put down the price of the iron; that the proposed purchase would not be at all speculative because we have sold the steel to be made from it.

"THE CHAIRMAN: It seems to me $18. is a good big price. I am very well satisfied to have the market sustained. I agree with you that we are interested in having pig iron maintained, but I think we ought to be satisfied with $18.

"MR. GAYLEY: I would rather buy it at $19.

"THE PRESIDENT: I would favor $19. or $18.50.

"Upon motion, duly seconded, the matter was referred to the Finance Committee."

State, Mr. Corey, whether or not such purchases at that time of pig iron would have the same effect in respect of the finished products and their price as you have answered in regard to the purchases that were spoken of previously made by the Carnegie Company.

A. That is probably the same purchase, for the reason that the first transcript you read referred to a meeting held in Pittsburgh and this was probably referred to New York; it was the same purchase of iron.

Q. Then the fact would be just the same?

A. Certainly.

Q. Mr. Corey, state whether or not the excerpts which I have read to you correctly express the policy of the United States Steel Corporation and the Carnegie Steel Company with respect to the purchase of pig iron from time to time with a view to maintaining and controlling the price of pig iron?

MR. DICKINSON: Read the question, please.

(The question was repeated by the stenographer.)

MR. SEVERANCE: I object to that as meaningless for this reason, that it appears that the excerpts just read purport to represent a debate at a meeting at which Mr. Corey was not present, at which different views were expressed, and at which no final action determining the question one way or the other was taken.

A. I will answer the question, Judge. There was no definite policy concerning the purchase of pig iron; during the time I was connected with the Carnegie Steel Company and with the Steel Corporation, pig iron was purchased frequently. In most instances it was purchased because the iron was needed, required; we could not make enough, but on certain occasions iron was purchased for the effect of maintaining the existing price of iron and steel products, not in relation to the scale contracts. I won't say positively and firmly that pig iron was never purchased to influence steel that was sold on scale contracts, because that was infinitesimal with the main part of it, but it was purchased for the purpose of maintaining the price then ruling on all steel products.

Q. That, you say, was done on various occasions?

A. That was done on several, or various occasions.

Q. While, as you say, it may not have been the policy to affect those contracts already made, did it, as a matter of fact, affect them?

A. Nevertheless it did. The point I want to bring out, Judge, is that they were so small that it was immaterial.

Q. It was immaterial to your company, when the percentage of those was compared with your entire output?

A. With our entire bookings.

Q. But how would that affect the purchaser? Might it not have been that what was immaterial to you might have been material to the purchaser?

A. It is possible, but I do not think it amounted to a great deal.

Q. I read you an extract from the minutes of the Board of Managers of the Carnegie Steel Company, Limited, of November 14th, 1898, appearing upon pages 1156 et sequitur of Volume 3 of the Government exhibits:

"Mr. Schwab: Pursuant to the action of the Board in leaving in my hands the preliminary negotiations leading up to the formation of an association for the proper controlling and regulating the steel rail business, I have had several interviews with the Presidents of the other Companies making Rails, and have had Mr. Moreland and Judge Reed in New York drawing up the formal papers. These are now submitted as follows:

Charter of Empire Rail Company.

Agreement between Carnegie and Empire.

Associated Companies with Lorain.

By-Laws and Organization of Empire.

"Carnegie et al, with Voting Trust, Trustee to be nominated at Organization of Empire, and hold and vote stock.

"Proposed Resolution for Boards of respective Companies to pass and present, approved, to Empire on date of Organization, which is set for Tuesday, 15th November.

" 'These papers cover all of the details that have been considered at our Meetings in New York, and have been approved by all the Presidents of the Companies, subject to the action of their respective Boards.'"

* * *

"MM. Andrew Carnegie and Henry Phipps, Jr., together with a minority of the Board, were of the opinion that the

objectionable features in the plan proposed more than counter-balanced the probable financial gain, the items especially disapproved being:"——

State whether or not that plan and arrangement were carried out.

MR. SEVERANCE: You do not intend to read any further?

MR. DICKINSON: I do not want to encumber the record with it. It was never carried out. I was going on to the next proposition. I will read it all if you wish me to do so.

MR. SEVERANCE: No. I simply wanted to know.

THE WITNESS: It is not necessary to read it. I have no recollection of it. I was not familiar with it at all.

MR. LINDABURY: I think I misunderstood the date. What was it?

MR. DICKINSON: The 14th of November, 1898.

MR. SEVERANCE: I intended to interpose an objection on the ground of immateriality, but as the witness says he remembers nothing about it, it is not necessary.

By MR. DICKINSON:

Q. Now, Mr. Corey, will you state whether or not subsequently to that an arrangement was entered into between the Carnegie Steel Company and the Federal Steel Company in regard to the output and price of rails, and if so, what that was?

A. I had no idea of that, Mr. Dickinson. I was the Works Manager at that time, and was not familiar with the arrangements at all. I was the Works Manager until April, 1901. And anything in that nature that came up I would not know of, of my own knowledge.

Q. State whether or not you knew of it through the officers of the company.

MR. SEVERANCE: What was that last? I did not catch it?

THE WITNESS: I made the explanation that I was the Works Manager until April, 1901, and I had no knowledge of any such arrangement.

By MR. DICKINSON:

Q. You say that you had no personal knowledge; what do you mean by that, Mr. Corey?

A. I had no knowledge of any details of any such arrangement.

Q. State whether or not you knew that there was such an arrangement.

MR. SEVERANCE: I object to that on the ground that from what the witness has already said, his answer would be hearsay.

THE WITNESS: I think I have answered your question, Judge. I could not answer anything but hearsay.

MR. DICKINSON: We will see about that.

BY MR. DICKINSON:

Q. State whether or not you heard any of the officers of the Carnegie state whether or not any such arrangement existed.

MR. SEVERANCE: I object to that on the ground that this relates to a period prior to the date of the United States Steel Corporation, and is incompetent and irrelevant, and asking for hearsay.

THE WITNESS: I will answer that question, Judge. I have no recollection of hearing that discussed at all.

By MR. DICKINSON:

Have you any knowledge as to whether or not there was any transfer under any arrangement of 6,700 gross tons of rails for the Lake Shore & Michigan Southern and the Illinois Steel Company, by which they would take care of that, under an agreement entered into between the Illinois Steel Company and the Carnegie Company?

MR. SEVERANCE: What is the date of that, Judge?

MR. DICKINSON: In 1899.

MR. SEVERANCE: I object to that as incompetent.

THE WITNESS: I cannot answer those questions, Judge. I have no recollection, and never heard it mentioned.

BY MR. DICKINSON:

Q. Then I understand you to say, Mr. Corey, that if there

was any alliance or agreement between the Federal Steel Company and the Carnegie Steel Company, or between the Carnegie Steel Company and the Federal Steel Company and the Cambria, or between the Carnegie and the Cambria or the Carnegie and the Colorado Fuel & Iron Company prior to April, 1901, you know nothing of it of your own knowledge, nor was anything communicated to you in regard to it by any officer of the Carnegie Company?

A. Yes; I have no recollection of anything of that sort.

Q. State whether or not after you came to be an officer of the Carnegie Company you acquired any knowledge of any arrangement existing at that time between the Carnegie Steel Company and any other company in regard to the price of rails or the proportional output of rails or selling rails in any territory or desisting from selling in any territory.

A. I did.

Q. Please state what such arrangements were and with whom they existed and what were their features.

A. You have that all on record. If you ask me the question, that would probably be answered more intelligently than if I should try to make an explanation.

Q. Well, of course, we are trying to get what you know about it yourself, so will you be good enough to give us your recollection?

A. Certainly I will endeavor to.

Q. Yes, if you please.

A. At that period there was a friendly relation existing between the various companies manufacturing steel rails whereby each company was supposed to manufacture a certain amount of rails per year according to the total tonnage of the country; if one company sold more rails than the percentage it was understood belonged to them, they might elect to transfer that tonnage to some other company. The prices were generally the same.

Q. The prices by agreement of those parties?

A. By understanding, yes.

Q. State what companies at that time were in that agreement.

A. Illinois, Cambria, Pennsylvania and Lackawanna, Carnegie.

Q. Do you know the proportion of the Carnegie in that arrangement, the percentage?

A. I do not.

Q. Do you remember the proportion of any of them?

A. I do not remember the proportion of any.

Q. How long did that arrangement continue and how long was it operated under?

A. My recollection is that it lasted until about 1904; it might have been 1905; I don't know.

Q. Were those companies at that time without that arrangement competitors of each other in interstate commerce in the sale of rails?

A. Yes, with the exception of the Illinois, which of course was combined with the Carnegie in the Steel Corporation.

Q. Now, Mr. Corey, please state who represented those several companies in those meetings.

MR. SEVERANCE: You mean in which he was present?

MR. DICKINSON: Yes, that is what I am talking about.

Q. I mean of your own knowledge, not what you heard?

A. Well, the Steel Corporation was represented at various times by different parties.

Q. State who they were?

A. At times Mr. Schwab represented the Steel Corporation and Mr. Fullington represented the Illinois, and I represented the Carnegie; at other times, Judge Gary represented the Steel Corporation and I represented the Carnegie and Illinois; Mr. Felton represented the Pennsylvania Steel Company. Mr. Walter Scranton represented the Lackawanna. Mr. Stackhouse represented the Cambria.

Q. Mr. Corey, what large producers of steel rails during the period you have mentioned, were outside of that agreement, if any?

A. Well, I do not recollect. I think that the Colorado Fuel was both out and in.

Q. Part of the time in and part of the time out?

A. Yes, sir.

Q. When it was in, did it cooperate as to prices?

A. Yes, sir.

Q. Can you think of any other large producer that never cooperated?

A. No; there were no other large producers of rails.

Q. So that included practically all of the rail producers, did it?

A. Practically all.

Q. Mr. Corey, state whether or not during any of that period the Tennessee Coal, Iron & Railroad Company was in that agreement.

A. I would not say positively, Judge, but I have no recollection of them being, I cannot state positively; I might be in error.

Q. What is the best of your recollection?

A. I do not think they were.

Q. Mr. Corey, state whether or not the price of rails was reduced from $35.00 to $26.00 in the early part of 1901.

A. I do not remember, but I presume it was; there was a reduction, but I do not remember.

Q. State how that reduction was brought about.

A. I don't remember that either.

Q. Was it a general reduction?

A. I don't remember that at all.

Q. But you know there was a reduction from the then prevailing price some time about that time?

A. I know there was a reduction, but I do not remember the year, and I do not remember the causes.

Q. State whether or not that reduction brought competition between those companies, or whether or not it was one generally participated in by all of them.

A. Will you tell me when that reduction took place?

Q. 1901 is the period I am asking you about, the early part.

A. I am sorry I cannot answer that, I cannot recollect.

Q. Do you know whether or not the price was raised after the reduction you have referred to, although you cannot give the precise time, whether the price was raised from $26.00 to $28.00 in 1901?

A. Well, if the price was $26.00, and you have a record of it being raised, of course it was, but I say I cannot recollect any particulars of a readjustment in prices at that period.

Q. Well, shortly after the United States Steel Corporation was formed, state whether or not $28.00 was the general price.

A. I think it was; $28.00 has been the price for so long that I do not remember when it was changed.

Q. Mr. Corey, state whether or not generally the rail pool after you became acquainted with it, and up to the period that you fixed when it was discontinued, was run along the same general lines as the Plate and Structural Association?

MR. SEVERANCE: There is no evidence that he knows how they were run.

MR. DICKINSON: I suppose he can say he doesn't know if he doesn't know.

A. I am not at all finicky about answering your question, Judge. The rail understanding was always conducted much better than the plate and structural, I can assure you.

Q. Mr. Corey, state whether or not there was a discussion between the rail manufacturers in the early part of 1907 and the early part of 1908, as to whether the price of rails should be reduced, and state whether or not they had not reached an agreement to reduce the price of rails from twenty-eight dollars.

A. In 1907?

Q. Yes, in the early part of 1907 and the early part of 1908.

A. The rail manufacturers probably had a conference, did have a conference, I have no doubt, but there was no understanding or agreement arrived at to either reduce the price of rails or maintain the price of rails.

Q. I read you, Mr. Corey, from the minutes of the United States Steel Corporation, November 1, 1904.

MR. SEVERANCE: What minutes are they?

MR. DICKINSON: Beginning at page 603 *et seq.*, Vol. II of Government Exhibits, November 1, 1904.

"The President brought up the question of making some arrangement with foreign producers in regard to price of rails to be sold in neutral markets. After a full discussion

the question was referred to Messrs. Gary and Corey with power."

Now, explain what neutral markets were?

A. Neutral markets of the world were the non-producing markets of the world.

By Mr. Severance:

Q. That is outside of the United States?

A. Of course, the United States is a producing market, so it is not a neutral market. Countries that were non-producers of steel rails were of course neutral markets.

By Mr. Dickinson:

Q. As between sellers in this country and other countries, what other markets were recognized? Were there such markets as a protected market?

A. What do you mean by "protected market"?

Q. I am just asking whether there was such a term as that known and recognized?

A. It was a general custom not to invade the territory of a producing country.

Q. That is, you mean by that, for instance, that the United States would not sell in Germany?

A. Exactly.

Q. Or in England? And vice versa?

A. And vice versa.

Q. Those markets, then, were protected markets, were they?

A. You might term them protected markets; they were not a neutral market. I never heard them called a protected market.

Q. State whether or not there were any other markets which were recognized as being preferential to certain producers, Mr. Corey.

A. There is a preferential tariff in Canada and Australia and in the British Colonies that gives England a natural advantage in those colonies. That is the only market that I know is protected.

Q. Was there any agreement between the United States Steel Corporation and foreign makers that there were certain markets other than those that you have described where

steel was manufactured, that would be recognized as markets that the United States Steel Corporation might sell in without competition, or certain markets that Germany might sell in without competition, or that Great Britain might sell in without competition, to those who were operating, if they were operating, under any understanding?

MR. SEVERANCE: I want to enter an objection to that question, on the ground that it is immaterial to any issue in this case raised by the pleadings or the law upon which the pleadings are founded.

(By request, the stenographer repeated the pending question).

THE WITNESS: My recollection is that there was no understanding or agreement at that period.

By MR. DICKINSON:

Q. Was there at any period?

A. At various times, yes.

MR. SEVERANCE: I make the same objection to that.

By MR. DICKINSON:

Q. State, Mr. Corey, just the scope and effect of those agreements and understandings.

MR. SEVERANCE: May I ask Mr. Corey a question preliminary to an objection?

MR. DICKINSON: Yes.

By MR. SEVERANCE:

Q. Have you any personal knowledge of this matter, or is it something that has come to your attention from some one else?

MR. DICKINSON: This minute says it was referred to him and Mr. Gary.

MR. SEVERANCE: Please do not suggest an answer. It is fair that I ask that question. If he is not the ultimate source of knowledge, you should produce the man who is.

THE WITNESS: Yes. At various times there were understandings with ——

MR. SEVERANCE: Pardon me one moment. I asked leave to ask you a question.

MR. COREY: I thought you had asked it.

MR. SEVERANCE: I did. But you did not answer it.

THE WITNESS: You asked if I had personal knowledge of it?

MR. SEVERANCE: Yes; I asked whether you had personal knowledge of it or whether it was something that come to you from some one else.

THE WITNESS: I had personal knowledge of it.

MR. SEVERANCE: Very well.

By MR. DICKINSON:

Q. Please state what these various understandings were, and what markets they affected.

MR. SEVERANCE: I make the same objection, that this is not responsive to any issue in the case.

THE WITNESS: There was an understanding with foreign manufacturers that, in the neutral markets of the world, certain tonnages should be distributed among the producing countries.

By MR. DICKINSON:

Q. Was Mexico a neutral market?

A. My recollection is that it was.

Q. Was that assigned to the United States Steel Corporation with the understanding, at any time, that the other makers would not compete there?

MR. SEVERANCE: I object to that as leading. This is not in accordance with what the witness has just stated was the understanding.

MR. DICKINSON: My question does not have to be in accordance with his answers.

MR. SEVERANCE: But your questions, on direct examination, should not suggest the answer. You are a very good lawyer, Judge, and you know you should not ask, on direct examination, a leading question.

MR. DICKINSON: I am obliged to you for the compliment, and shall try to deserve it. Let me have my question read.

MR. SEVERANCE: The preceding answer was that the understanding was as to a division of tonnage in these neutral markets,—not a division of territory.

(By request, the stenographer repeated the preceding question as follows:)

"Q. Was Mexico a neutral market?

"A. My recollection is that it was.

"Q. Was that assigned to the United States Steel Corporation with the understanding, at any time, that the other makers would not compete there?"

MR. DICKINSON: I think that is a competent question.

MR. SEVERANCE: I object to it as incompetent.

THE WITNESS: It is—

By MR. DICKINSON:

Q. It was so assigned?

A. No; it was not.

Q. Was any country or territory so assigned?

A. Never.

Q. My question was as to the United States Steel Corporation. Was it assigned in any way, or under any form of agreement or understanding, to any representative or company or agent, directly or indirectly, of the Steel Corporation?

A. The State of Mexico?

Q. Yes.

A. Or any other state?

Q. Yes.

A. No.

Q. How about to the American manufacturers?

A. No.

Q. Was any country?

A. No. I want to say—

Q. Wait a minute.

A. I know what you are leading up to, Judge, and that is the reason I answered so quickly. I wanted to make your mind clear.

Q. I am very glad to have my mind made clear. It is sometimes not as clear as it might be. Sometimes a person knows what a man is going to ask before he asks it.

A. I thought I did.

Q. What did you think I was going to ask?

A. You were going to ask—

Q. You are telling me what I am going to ask,—not what you think I am going to ask.

A. You were going to ask if any country or state was parceled out to any manufacturer or any set of manufacturers.

MR. BOLLING: Now, Judge, I think you should answer, honestly, whether that is not what you were going to ask?

By MR. DICKINSON:

Q. What do you mean by "parceled out"?

A. That the requirements of any country or any state were allotted to any manufacturer or any group of manufacturers.

Q. Was there any portion of the requirements of any country that were so affected by any arrangement that one or more of the parties entering this agreement could sell there to the exclusion of others?

A. No.

Q. This minute says that after a full discussion the question was referred to Messrs. Gary and Corey, with power. State whether or not you and Mr. Gary took up that matter,—the question of rails to be sold in neutral markets.

MR. SEVERANCE: When was that? November 1, 1904?

MR. DICKINSON: Yes.

THE WITNESS: I presume that we did.

By MR. DICKINSON:

Q. With whom?

A. With other manufacturers.

Q. In this country or abroad?

A. Both.

Q. Both in this country and abroad?

A. Yes.

Q. With what manufacturers in this country did you take it up?

A. Manufacturers on the Seaboard, like the Lackawanna and Pennsylvania.

Q. Generally, without giving the names, the manufacturers of what other countries? I mean, without giving the names of the manufacturers?

A. I understand, perfectly.

Q. I do not want to burden you with the details any more than is necessary.

A. England, France, Germany and possibly Belgium. I have forgotten.

Q. Where did you meet, or did you meet at all?

A. We did not meet at all.

Q. How did you conduct the negotiations?

A. I do not recollect, Judge, how that was taken up at that time.

Q. How did you take it up at any time? Did you ever meet with any foreign manufacturers anywhere with regard to the question of territory in which rails should be sold?

MR. SEVERANCE: He has already stated that there was not any such arrangement. He has stated it several times.

THE WITNESS: I never did, personally, no.

By MR. DICKINSON:

Q. You never met any foreign manufacturers on this subject?

A. On the subject of rails, no.

Q. Did anybody representing the Steel Corporation?

MR. SEVERANCE: If he knows, personally.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Who?

A. Mr. Farrell.

Q. Where did he meet them?

A. He met them abroad.

Q. When?

A. At various times when the question was being discussed.

Q. Were reports of that made back to the United States Steel Corporation as to what was done? I do not mean in writing, but in any way?

A. Verbal reports; yes.

Q. Did the result of that affect the United States Steel Corporation? I mean, did it have any bearing upon its business, or the conduct of its business, or the sale of its product?

MR. SEVERANCE: What do you mean? Do you mean did it increase its output or its exports?

MR. DICKINSON: I just mean whether or not any arrangement entered into by Mr. Farrell as representative of the United States Steel Corporation affected it in the conduct of its business, affected the sale of its products in foreign countries in any way.

THE WITNESS: That would be mere opinion. I am of the opinion that it did increase the foreign business of the United States Steel Corporation.

By MR. DICKINSON:

Q. Now, Mr. Corey, when did Mr. Farrell first meet these manufacturers? In what year?

A. I could not state that. From that record of the minutes I would presume it was some time after that.

Q. Some time after 1904 that would be?

A. Yes.

Q. What was the character of the arrangement entered into by the representative of the Steel Corporation, and with whom was the arrangement made?

A. I am not familiar with those details.

Q. I do not want the details, but tell me the general character of it.

MR. SEVERANCE: I object to that. It is apparent that the witness does not feel qualified to answer. He ought not to be asked to speculate about things that he does not recall.

THE WITNESS: I think that I have already answered that question, Judge, that the Steel Corporation did not sell rails in producing countries, but sold their rails in the neutral markets.

By MR. DICKINSON:

Q. Under that agreement, or as a result of those negotiations?

A. Yes.

Q. How long did that continue, Mr. Corey?

A. I believe there was an understanding with the foreign manufacturers as late as the end of the year 1910.

Q. You have stated, Mr. Corey, that under this, the United States Steel Corporation was not to sell and did not sell in countries abroad where steel rails were being manufactured. State whether or not, under this arrangement, the manufacturers of these other countries refrained from selling in the United States.

A. That was the understanding.

Q. As a matter of fact, was that carried out, so far as you know?

A. Generally, I believe.

Q. State whether or not under this arrangement there was any agreement as to percentages up to which the makers in America and in foreign markets could sell in neutral markets.

A. I do not believe I am qualified to answer that, Judge.

Q. Do you know anything on that subject?

A. Very little.

Q. Was that discussed in your Board meetings, or in your Committee meetings?

A. Never; I never heard it mentioned.

Q. Have you any information of any character either of your own knowledge or derived from any officer or director of the United States Steel Corporation?

A. No, I would say as I said that Mr. Farrell was the only man that was familiar with the details of that business.

Q. Did he have full power to act for the Corporation?

A. I believe so.

Q. I read you from the minutes of the Carnegie Steel Company meeting October 30th, 1905, appearing upon page 506, Volume 2, Government Exhibits:

"MR. BOPE: We have 122,000 tons of rails outstanding on contracts in addition to those included in the report.

"On the general situation there is not much new to be said. It is just as strong as it has been at any time. The only item of interest is that we closed with the Standard Steel Car Company during the week for all their requirements for ten years. It might seem that we could have been reasonably sure of their tonnage from year to year, but with our enormous capacity and the contemplated additions to it, it seems to me the

thing to do is to get as much "back-log" tonnage as possible. In going over our books it is apparent that we have obtained the cream of the tonnage placed in the country during the past year in heavy axles, plates, shapes and bars. We have picked our business taking only the most desirable, and even if we did not always get the highest price our "back-log" tonnage and the ability to turn out an enormous production have been better than to get top prices by taking more undesirable work. With the exception of the American Car & Foundry Company we have the best buyers tied up, and even in bad times we should be able to run our works fairly full."

What is the meaning of that term back-log tonnage?

MR. SEVERANCE: I object to that on the ground that this was a meeting of the Carnegie Steel Company and at that time, October 30th, 1905, Mr. Corey could not have been present at the meeting. He was then in New York as president of the company.

MR. DICKINSON: Do you know he was in New York on that day?

MR. SEVERANCE: You do not show he was out there. He naturally would be at his office here, and this is the Carnegie Steel Company that meets out in Pittsburgh. You have not shown that he was present and I object to this statement as incompetent and immaterial.

Q. Mr. Corey, the question I ask is whether you know the meaning attached to the term "back-log tonnage" as used there?

A. Back-log tonnage means a large tonnage that will serve as a back-log to keep your company going if other business should fall off; that is all, like a back log in a fire, it is burning there constantly all the time.

Q. It is constant?

A. Yes.

Q. And these were constant?

A. That is a long time contract covering a large tonnage; of course, that was the back log.

Q. What character of contract was entered into with the American Car & Foundry Company?

MR. SEVERANCE: He said he did not have any with the

American Car & Foundry Company in the statement you have just read.

MR. DICKINSON: I am just asking if there was one.

A. I have no recollection of the details of either contract. You see that was conducted by our selling people.

Q. Now, at that time, or previous to that time, or from time to time or at any other times that you can mention, state what concerns were so related to you by contract as to constitute in respect to them back-log tonnage.

A. I do not know that I recollect into the individual contracts at that time, Judge; it is a difficult question for me to answer.

Q. I will read to you, Mr. Corey, a meeting of the directors May 2nd, 1904, the Carnegie Steel Company, Volume II, Government Exhibits, page 496. I will ask you first if you were a director of the Carnegie Steel Company at that time.

A. Yes, I was a director until the time I left the Steel Corporation, but I seldom or never attended the meetings because I was here.

Q. "Mr. Bope: * * * We have closed a ten-years' contract with the Crucible Steel Company for their entire supply of raw materials—consisting of Bessemer billets, such open hearth billets as they do not make themselves, basic and Bessemer Pig Iron, low phosphorus Pig Iron, and Ferro Manganese. The contract is on a sliding scale, based on the price of Pig Iron, and will, I think, on the average over the time it has to run, be a very satisfactory deal."

State whether or not that would be included among the back-log tonnage.

A. It would.

Q. Do you know whether or not a contract was entered into on or about June 28th, 1905, between the Carnegie Steel Company and the Pittsburgh Steel Company?

A. Yes.

Q. State whether or not that contract came under the head of back-log tonnage.

A. I would not say, because it was not a large contract. It is only a large contract that we consider a back-log tonnage.

Q. What would you consider a large contract?

A. Say for a company that would take out fifteen or twenty thousand tons a month.

Q. At page 1467 of the Government Exhibits, Vol. IV; in that contract under the head of

"Quantity: Buyers' entire requirements yearly of standard soft Bessemer and soft Open Hearth steel billets 4" square and under of such sizes as are rolled by Sellers, not exceeding two hundred thousand (200,000) gross tons of Bessemer and Open Hearth steel billets. Not more than twenty-five per cent. (25%) of the total tonnage to be taken each year in Bessemer or Open Hearth steel billets under 4" square."

Now, that contract for ten years, I will ask you whether now your attention being called to the contract on the record, as to whether it comes in the back log tonnage?

A. I believe I would interpret that as being called back log tonnage.

Q. Do you know whether or not there was a contract with the Standard Oil Company or the National Transit Company for a large tonnage running over a period of time?

A. At various times there were contracts made with the National Transit Company for large tonnages.

Q. Would that come under that designation of back log tonnage?

A. It would.

Q. How about the Standard Steel Car Company?

A. The same.

Q. The same?

A. Yes sir.

Q. The same to both questions?

A. Yes sir.

Q. How about the American Can Company?

A. That also.

Q. How about the American Steel Foundry?

A. I do not recollect the contract with the American Steel Foundry. I think it was insignificant.

Q. How about the Oliver Iron & Steel Company?

A. I do not recollect that contract.

Q. Do you know whether or not there was any contract with the Harriman lines in regard to wire products?

A. I do not recall.

Q. You do not recall?

A. No.

Q. How about the Pressed Steel Car Company?

A. That was a large tonnage.

Q. It would come under that same heading?

A. It would, yes.

Q. How about the American Car & Foundry Company?

A. I do not remember that we ever had any large contracts with the American Car & Foundry Company.

Q. State whether or not the American Car & Foundry Company was a large or small concern.

A. A large concern.

Q. Well, in Vol. III, Government Exhibits, beginning at page 1207 is the contract between the Carnegie Steel Company, Limited, and the American Car & Foundry Company, entered into in 1899, and on page 1211 appears the following: "Fourth. Notwithstanding any previous provisions of this contract, the total quantity of material Sellers shall be required to deliver in each month shall not be more than Five thousand tons. And, in case the Buyers require more than the above maximum quantity of material in any one month, the sellers are hereby given the option of furnishing such excess at the prices and upon the terms and conditions fixed in this contract."

State whether or not you have now any recollection of that contract, your attention having been called to it, and whether you would regard that as a large contract.

A. I do not recollect the contract, and invariably some of the independents furnished the American Car & Foundry Company.

Q. Invariably?

A. Invariably. I know of Carnegie selling them at odd times, but the bulk of the tonnage was furnished by other manufacturers.

Q. Notwithstanding the agreement that you had with them?

A. How long did that contract run?

Q. Ten years.

A. What year was that?

Q. That was 1899, that was the year.

A. 1899?

Q. Yes. Now I will call your attention in connection with what you have just stated to a meeting of the directors of the Carnegie Steel Company, October 30, 1905, page 506, Government Exhibits, Vol. II, in which the following appears:

"Mr. Bope, we have 122,000 tons—

MR. SEVERANCE: You read that whole statement into the record just a few moments ago.

MR. DICKINSON: Excuse me. That is not what I wanted. It should be 507: "As a matter of policy, Mr. Corey has told the American Car & Foundry Company that we do not care for their eastern business. Their western trade is ours legitimately, but the eastern business we are satisfied to give to Lackawanna and Jones & Laughlins. I think this is a wise move, as we have the Pressed and Standard Companies tied up for their entire requirements. To take all this tonnage from our large competitors would simply mean that they would encourage new car works, and I do not think it would be wise for us to take a stand that would bring this about."

State whether or not that is an explanation of why this contract was not strictly enforced, if it was not enforced.

MR. SEVERANCE: There is no evidence that the contract was not strictly enforced. The seller was not obliged to furnish over 5,000 tons a month under that contract. You read that provision yourself a little while ago. Now, if they had a tonnage requirement of 10,000 and 15,000 tons, there would be no violation of the contract if they did not furnish in excess of what they had contracted to furnish. This is not Mr. Corey's explanation; this is the statement of Mr. Bope.

Q. Now, Mr. Corey, will you please answer the question?

A. I do not think I can answer that intelligently. I really cannot remember the details, but my recollection of that contract was that we never furnished but about one-third or one-quarter of their tonnage. I think they were using 15,-

000 to 20,000 tons a month, and we had a contract to furnish them approximately 5,000 tons. I think it reads differently there, but my recollection of the American Car & Foundry business was that the mills in the East were so located that they reached eastern shops to so much better advantage than we could that, unless in a time of dire necessity, we did not want to send material there; but if we could sell it in Pittsburgh or the West we did, because it was a natural saving of freight to us.

Q. Mr. Corey, at the time the Union Steel Company was taken over by the United States Steel Corporation, state whether or not the Union and the Sharon Companies had acquired considerable coke properties. I mean, prior to the time of taking them over.

A. I do not remember, Judge.

Q. State whether or not the Union Steel Company at that time manufactured and sold in interstate commerce wire products?

A. Yes.

Q. State whether or not at that time they were increasing their blast furnace and open hearth furnace capacity.

A. My recollection is that they were; that they were building a new plant.

Q. Was the Sharon Steel plant manufacturing and selling in interstate commerce wire products also?

A. Yes.

Q. State whether or not it was making tin plate.

A. They were either making tin plate or sheets.

Q. I was going to ask about both.

A. They may have been. They were making either one or the other or both.

Q. Did they have skelp works?

A. Yes.

Q. State whether or not they were adding tube works to their plate mills.

A. They were.

Q. Were they or not producing hoops?

A. I do not think so. I have no recollection of it.

Q. State whether or not the facts in regard to which you

have answered were known to you at the time that it was taken over. I mean, previous to the time it was taken over.

A. Certainly they were known.

Q. Was or was not the Union Steel Company at the time it was taken over by the United States Steel Corporation a competitor of various of the subsidiaries of the United States Steel Corporation in interstate commerce?

A. It was.

Q. State whether or not the proposed increases and additions which have been mentioned in your testimony here would have increased that competition.

A. They would.

Q. And its ability to compete?

A. Yes.

Q. What was the character of that competition? Was it sharp competition, or getting to be sharp competition?

A. I do not remember.

Q. What was the moving cause, Mr. Corey, of the United States Steel Corporation's taking over the Union Steel Company and its subsidiaries?

A. I do not remember the moving cause, Judge. It seems to me that Mr. Frick was instrumental in the consolidation of the companies with the Steel Corporation. He was interested in the Union Steel Company, and he was a director of the Steel Corporation.

Q. And that company was a competitor of the Steel Corporation?

A. It was a competitor of the Steel Corporation. My recollection is that, on behalf of these companies, he made a proposition to the United Steel Corporation. I was still in Pittsburgh at that time, and was not familiar with the details.

Q. How long does it take to construct an open hearth furnace, Mr. Corey?

A. I presume you mean an open hearth plant?

Q. Yes.

A. About a year.

Q. Do you know what time the blast furnaces of the Union Steel Company were put in operation after their purchase or their being taken over by the United States Steel Corporation?

A. I do not.

Q. State whether or not it was more than a year.

A. I could not even do that. You are asking me rather difficult questions, Judge.

Q. I know. Of course, I understand that remembering dates and details is difficult; but I want to get what you know, and I know you will not state what you do not know.

I read to you from the minutes of the Carnegie Steel Company, meeting of November 4, 1902, page 477, Volume 2, of the printed Government Exhibits:

"MR. BOYCE: There is one matter I wish to bring up and that is the price of pig iron in connection with our scale contracts. The average market price for October was $22.29, an advance of about a dollar over the price for September. I feel that this price is too high, yet it is the actual average for sales made during the month, which, however, amounted to only 32,000 tons. If we were to hold our scale contract customers to a price of $22.25 for pig it would make the price of billets to them higher than the present market, thus giving their competitors an advantage over them.

"MR. COREY: They cannot say that we forced the price up as we did not buy any iron; but I do not think we should force them to pay more than the market price for billets, except perhaps in the case of the Union Steel Company. I think it would be a good plan to hold them to the contracts if it can be done. I am strongly in favor of pushing Union Steel Company as hard as we can. There is nothing we can do to smooth matters over with them as they are determined to do all they can against us. For the others I think $28.00 for billets would be high enough."

State whether or not the statements that you made there were the facts as you knew and understood them.

A. They must have been, or they would not have been there.

Q. I will ask you, after reading that, whether or not the Union Steel Company was not an aggressive competitor of the United States Steel Corporation.

A. I believe they were. I do not propose to state this as

a statement of fact, but it is my recollection that the Union and Sharon, being new people in the business, were taking some customers away from the Carnegie Steel Company. That is the only way I can answer that.

Q. That is competition, is it not?

A. You might consider it so, yes, sir.

Q. I will ask you, Mr. Corey, whether or not the moving cause, or the main purpose, of acquiring the Union Steel Company was simply to acquire open hearth furnaces for early use.

A. I think I answered that question once before, Judge.

Q. I do not remember it.

A. I was in Pittsburgh at the time, and I was not familiar with the details of the taking over of these two concerns. I have no recollection of being present at any of the conferences or consultations prior to the taking over of these companies.

Q. How many new blast furnaces were they building?

A. Either two or three.

Q. And how many open hearth furnaces?

A. Twelve.

Q. What would it have cost, in round numbers, to have produced twelve open hearth furnaces at that time?

A. About $150,000 a piece.

Q. And the blast furnaces?

A. A million and a half.

Q. How much was paid for the Union Steel properties?

A. I have no recollection.

Q. Was it more or less than the sums of those two amounts that you mentioned?

A. That did not cover the Union Steel Company. That simply covered one plant. The Union Steel Company was a large aggregation of mills and furnaces, and coal and coke plants.

Q. That is what I say. So the consideration by the Union Steel Company was largely in excess of the figures you have mentioned for which new blast furnaces and new open hearth furnaces could be reproduced?

A. Yes.

Q. Would you say that was a small part of its plant—those two items I have mentioned?

A. That would be a small part of their holdings, yes.

Q. Do you know Mr. A. R. Hunt?

A. Yes.

Q. Who was he? What was his business?

A. He was a department superintendent at Homestead when I was manager there, and at the present time he is the general superintendent of the Homestead Steel Works.

Q. Is he a man familiar with the construction and requirements in the construction of blast furnaces and open hearth furnaces, or not?

A. Yes; I would say of both.

Q. Mr. Corey, state whether or not, the tube mill of the Sharon Works was dismantled after the Union Steel Company was taken over by the United States Steel Corporation.

A. It was.

Q. How long after it was taken over?

A. I do not recollect; but I ordered it dismantled, for the reason that it was useless, and could not be operated.

(Whereupon, at 4 o'clock P. M., an adjournment was taken until tomorrow, January 23, 1913, at 11 o'clock A. M.)

THIRTY-EIGHTH DAY.

REFERENCE ROOM, ST. PAUL BUILDING,
220 Broadway, New York,

THURSDAY, JANUARY 23, 1913.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the defendants, Mr. Severance, Mr. Bolling and Mr. Reed.

WILLIAM E. COREY

a witness produced on behalf of the United States, having been previously sworn, testified further as follows:

DIRECT EXAMINATION (Continued).

By MR. DICKINSON:

Q. Mr. Corey, yesterday when you testified to the arrangement between American producers of rails and foreign producers of rails, you spoke of a Mr. Farrell but did not give his full name. Will you please give the full name of the Mr. Farrell you meant?

A. James A. Farrell.

Q. Is he President now of the United States Steel Corporation?

A. He is.

Q. Before he became President of the United States Steel Corporation, did he or not hold any position with any subordinate or affiliated company of the United States Steel Corporation?

A. He was the President of the Steel Corporation's Export Company.

Q. What was the province of that company, what was the purpose of its organization and what did it do in a general way?

A. Simply to sell steel for export.

Q. The steel manufactured by the subsidiaries of the United States Steel Corporation?

A. Yes, sir.

Q. Were all or not of the export sales of the various subsidiaries of the United States Steel Corporation transacted through this Export Company?

A. They were.

Q. How long had Mr. Farrell been in charge of that before he became President of the United States Steel Corporation?

A. Five or six years.

Q. Was that company owned and controlled by the United States Steel Corporation or its subsidiaries?

A. I do not recollect what its capitalization was or whether it had a capitalization; it probably must have had, but the company was owned and controlled by the United States Steel Corporation.

Q. Mr. Corey, I call your attention to the minutes of the Carnegie Steel Company of March 30th, 1903, page 488, Volume II of Government Exhibits, and read to you as follows:

"(Meeting March 30, 1903)

"MR. BOPE: In addition to the rails shown on the report, we have outstanding 67,000 tons. We booked a number of nice orders during the week, ranging from 500 tons up, and have quite a lot of tonnage pending. The steam roads are coming in for additional quantities.

"As a matter of information for the Board I might say that we have decided now to go ahead and push Nickel Steel Rails. We have fixed the price at $64.20.

"I understand the Tennessee Coal, Iron & Railroad Company have come into the market again quite actively. They sold 6,000 tons to the Frisco Line, and are bidding on 9,000 tons for a southern road. For a time their product was not regarded favorably by the railroads, but they claim now that they are making as good rails as any mill in the country and are going after tonnage."

And on page 492 of the same volume, the minutes of the Carnegie Steel Company of May 18th, 1903, read as follows:

"LACKAWANNA AND TENNESSEE COAL & IRON.

"MR. COREY: According to latest reports Lackawanna may get started in October. They are now quoting rails for October, November and December delivery.

"I also observe from a letter of one of our agents that the Tennessee Coal, Iron & Railroad Co. are offering rails in the South at $2.00 above the agreed price."

MR. COREY, state whether or not at that time the Tennessee Coal, Iron & Railroad Company was in any degree a competitor of the Carnegie Steel Company in the sale of steel rails.

A. It was.

Q. What did you refer to there when you said "that the Tennessee Coal, Iron & Railroad Company are offering rails in the south at $2.00 above the agreed price?" What agreed price?

A. At that period there was an understanding as to prices between the rail manufacturers.

Q. The Tennessee Coal, Iron & Railroad Company was a party to that, or not?

A. I would judge not; I don't remember, but I judge not.

Q. Mr. Corey, state whether or not it was at that time in competition with those who were parties to that agreement in territory where it could deliver rails to advantage.

A. It was.

Q. Now I call your attention to the minutes of the Carnegie Steel Company of July 20th, 1903, Government Exhibits Printed Vol. II, page 493:

"MR. BOPE: * * * I am getting information as to the export market, and expect to have all the figures ready within a week. I think Mr. Corey's idea, with regard to the price of rails, is about right, as the Tehuantepec Railroad in Mexico have just placed an order on which it would have been necessary for us to shade $20.00 mill a trifle to compete. With Tennessee and Lackawanna in the market, I think it will be necessary for the corporation to sell abroad about 200,000 to 250,000 tons of rails next year, figuring on running all the rail mills full."

State whether or not that took place, and whether you did sell rails abroad the next year, and if so, whether the fact of the Tennessee and Lackawanna being in the market as competitors affected that result in any degree.

A. I have no recollection of what transpired, Judge.

Q. Now, in reference to this statement that "it would have been necessary for us to shade $2.00 mill a trifle to compete" I will ask you whether there was any difference between the export price and the domestic price of steel rails at that time or not, generally; in other words, was the market price higher in this country at the mill than it was abroad?

A. At that time it is evident the price was lower.

Q. Lower where?

A. The price would be lower at the mill for export rails into Mexico than it was for domestic rails.

Q. Subsequent to the formation of the United States Steel Corporation, state whether prices generally of rails manufactured in this country were higher or lower to the domestic consumer than they were to the foreign consumer?

A. That is a very difficult question to answer, because the freight rate from the mill to the point of destination may have made the price higher to the foreign consumer than to the domestic consumer.

Q. The price at the mill in this country is what I mean. State whether the price quoted to foreign consumers was higher or lower than that quoted to the American consumer.

A. The mill price was generally lower.

Q. Lower to which?

A. I will answer it in another way. I want to get it perfectly clear and straight.

Q. Yes.

A. The mill price on foreign business netted the producer less than the domestic price. Is that clear?

Q. Yes, I think so. It is clear, of course. I will put it in this way: Was the price at the mill lower or not, for rail products exported, than for products consumed in this country?

A. Invariably.

Q. Can you give the differences as to any periods?

A. That would be impossible.

Q. Can you approximate what they would be?

A. I would not undertake to do that.

Q. I call your attention to the minutes of the Carnegie Steel Company of March 19, 1906, Government Exhibits printed Volume II, page 510 (reading):

"MR. PORTER: * * * In connection with the rail situation, I might say there was a time when there was a great deal of agitation among the railroads about low phosphorus rails. Now the same agitation is coming up in the direction of open hearth rails, but I do not believe it will go so far that the railroads will not buy any more Bessemer rails as has been stated in the papers. We have such advice as this, for instance. The General Superintendent of the Pittsburg & Lake Erie told us the other day that after testing Open Hearth rails furnished them by the Tennessee Coal & Iron Company and our Bessemer rails, they have decided that Open Hearth are twice as good as Bessemer rails. He wanted to know when we would be able to make Open Hearth rails, and said they would be willing to pay a little more for Open Hearth than for Bessemer. The same thing has come to us from two or three other people, indicating that the railroads are paying a little attention to the matter. At the time when they were buying rails we could not make Open Hearth, and, of course, they took Bessemer, and they will not be able to get Open Hearth anywhere in this country for the next year and a half; but I imagine that when the demand for rails falls off, which will probably be in 1907 on account of the heavy purchases made last year and this, then we will be up against the Open Hearth proposition good and hard."

What class of rails was the Tennessee Coal, Iron & Railroad Company adapted for making?

A. Open Hearth.

Q. Open Hearth rails?

A. Yes.

Q. The statement here is that probably in 1907, on account of the heavy purchases made last year and this, "then we will be up against the open hearth proposition good and

hard". When did your company take over the Tennessee Coal, Iron & Railroad Company?

A. You must have that on your record. It was either 1907 or 1908.

Q. It was in 1907.

A. In 1907.

Q. I call your attention to the minutes of the Carnegie Company of December 24, 1906, Government Exhibits, printed Volume II, page 545 (reading):

"MR. DINKEY: We lost a nice rail order during the past week. The Harriman Lines passed all the Bessemer mills and gave Bethlehem an order for 22,500 tons of Open Hearth rails, paying a bonus of $1.50 per ton. The contract calls for delivery in August.

"MR. CLEMSON: I think the sooner we get into Open Hearth rails the better. They will, of course, cost a little more money, but I have no doubt the railroads will be calling for them right along."

State whether or not the railroads had been making complaints at that time, and shortly previous thereto, of accidents, attributed by them to Bessemer rails.

A. They have always made complaints, and are still making complaints about the rails, both Bessemer and open hearth.

Q. What character of rails then, mostly and principally were used in the United States, Bessemer or open hearth?

A. Bessemer.

Q. I will ask you whether or not, at that time and about that time, there was considerable agitation about the number of accidents which were attributed by railroad men to the Bessemer rails and their supposed defects.

A. I could not say that there were any more at that period than at any other time.

Q. I am not speaking of whether there were more accidents, but—

A. (interposing) I am answering your question, Judge. I do not know that there were any more complaints during that period than at any other time.

Q. Were there complaints at that period?

A. There were.

Q. State whether or not your company, the United States Steel Corporation or its Subsidiaries manufacturing rails were considering at that time going largely into the production of open hearth rails and abandoning the Bessemer rail.

A. At what period was that?

Q. This was in 1906.

MR. SEVERANCE: Read the next thing, Judge,—what Mr. Dinkey said, right after where you stopped reading, which answers your question.

MR. DICKINSON: I will read it.

THE WITNESS: The Carnegie records seem to be everlasting.

MR. DICKINSON: They are pretty full.

MR. SEVERANCE: Mr. Dinkey answered the question, on the next line, where the Judge stopped reading.

MR. DICKINSON: I was reading from a memorandum and read all that I had here.

MR. SEVERANCE: If you will turn to page 516—

MR. DICKINSON: I will read anything you want At the request of Mr. Severance—

MR. SEVERANCE: No; it is not at my request. It is simply a suggestion made for your benefit.

MR. DICKINSON: At the suggestion of Mr. Severance, then, I will read you further, on page 516.

THE WITNESS: I should be delighted.

MR. DICKINSON: (Reading).

"MR. DINKEY: We are getting into them as fast as we can. We have the Ohio Open Hearth authorized, and this will be 1,200 tons of ingots per day that can go into rails if necessary.

"MR. BOPE: That is just an example of the increasing competition we have in nearly every line, and we shall have to keep on strengthening our organization to keep in touch with customers."

MR. SEVERANCE: I thought it was curious that you overlooked reading that.

MR. COLTON: We have to stop somewhere.

MR. DICKINSON: I was just about to express my obligation to you for calling my attention to it.

(Continuing reading)

"In the East particularly it is getting very aggressive, and we do not dare let up for a minute. I have given orders to our agents that the offices of our customers must be visited more frequently than in the past, and that when an order is taken from a customer and put on the books we should not feel satisfied with this, but every reasonable effort should be made to secure more of his material and keep him in line. Of course, we have a big power back of us in our ore reserves and our strong organization, still lots of other little things help to get and keep business, and we have to be watching and working all the time."

THE WITNESS: I am satisfied, Judge, if Mr. Severance is.

By MR. DICKINSON:

Q. Was competition increased at that time in rails, as Mr. Bope states?

MR. SEVERANCE: He does not confine it to rails.

By MR. DICKINSON:

Q. I am asking as to rails; as to whether competition in rails was increased at that time?

A. It would seem so from that record; but I do not see that it was. There were no new mills coming in at that period.

MR. DICKINSON: The Government produces the volume of the Iron and Steel Works Directory of the United States for the year 1908, and offers in evidence so much thereof as appears under the heading Tennessee Coal, Iron & Railroad Company, beginning on page 196 and ending on page 200.

MR. SEVERANCE: I object to the same as incompetent and immaterial.

STIPULATION.

It is stipulated by counsel that only the pages of said volume indicated be printed in the evidence unless counsel for either side shall call for the printing of the entire volume.

(The said book referred to was marked Government Exhibit 340, January 23, 1913.)

Q. Now then, Mr. Corey, on page 198 of said Volume I read you the following under the heading—

MR. SEVERANCE: May I ask whether you are proposing to read something to him to refresh his recollection?

MR. DICKINSON: No, I am asking him about facts.

MR. SEVERANCE: I will enter an objection before you put the question, in view of what counsel has stated. I object to reading to the witness any statement contained in this publication preparatory to putting a question as to the same facts, on the ground that it is inadmissible to endeavor to lead the witness by such a method.

MR. DICKINSON: I think I have got a perfect right to lead this witness. He is a director of the defendant corporation, and subject to your exceptions I will proceed to question him.

By MR. DICKINSON:

Q. I read you now from page 198 under the heading of Tennessee Coal, Iron & Railroad Company.

"Steel Works Division, Ensley, Alabama. Built in 1898-9; first heat poured November 30, 1899; eleven 50-gross-ton basic open-hearth furnaces (10 tilting and one stationary) with an annual capacity of 350,000 tons of ingots; one coal reheating furnace, five 4-hole soaking pits, and one 44-inch blooming mill; product, blooms, billets, and slabs; also one 27-inch rail train with one 2-high 34-inch roughing mill; rail mill now being rebuilt and will probably be ready for operation in November, 1907; first steel rail rolled November 14, 1902; estimated annual capacity of rebuilt mill, 600,000 tons of rails."

State whether or not, Mr. Corey, after the acquirement of the properties of the Tennessee Coal, Iron & Railroad Company, the rail mills then in process of construction were completed.

A. They were.

Q. And what capacity were they?

A. Between four and five hundred thousand tons per year.

Q. Now, at that time, Mr. Corey, how many other makers of rails in the United States had a capacity of 500,000 tons of rails per year?

A. All with the exception of Bethlehem.

Q. How about the Cambria?

A. They had a capacity in excess of that.

Q. Well, do you feel confident about that?

A. Reasonably so.

Q. At that time in 1907?

A. Reasonably so.

Q. What was the capacity then of the Pennsylvania Company as distinguished from the Maryland?

MR. SEVERANCE: I object to that; it does not appear the witness was ever connected with that company or that he has any special knowledge in reference to its capacity. He may know; you have not shown that he has any knowledge.

MR. DICKINSON: When he answers the question we will find out.

THE WITNESS: The Steelton plant, not both plants together?

By MR. DICKINSON:

Q. No, just the Pennsylvania?

A. I would not care to answer that question specifically.

Q. How about the Colorado Fuel & Iron Company; do you know what their capacity was at that time?

A. I would judge 600,000 tons per year.

Q. Are you speaking from an estimate merely or from an accurate knowledge?

A. I am speaking from my recollection of the size of their plant; it might not be entirely correct.

Q. Do you know whether or not it was customary for those concerns that we have just mentioned to report their tonnage to the iron and steel works of the United States for the same to be published by Mr. Swank in this publication.

A. My recollection is that it was.

Q. State whether or not, Mr. Corey, the tonnages as given in this publication were accepted generally as being correct.

A. The tonnages in that publication were the tonnages that they produced, not their capacity.

Q. And you are speaking then of capacity and not of production?

A. Entirely; you asked me the question.

Q. I am very glad you called my attention to the distinction. When you spoke of the mills of the Tennessee Coal

that were completed by the United States Steel Corporation or after it acquired control, were you speaking of capacity or production?

A. Capacity.

Q. Mr. Corey, did you say that your understanding was that the reports here showed production or capacity?

A. Production.

Q. The United States Steel Corporation and its subsidiaries were members of this Association, were they not?

A. Yes.

Q. I will ask you to examine this publication and state whether or not you are correct about that (handing book to the witness).

MR. SEVERANCE: I object to the question and the method of procedure. Counsel should not be permitted to cross-examine his own witness.

MR. COLTON: He can call his attention to a possible error—for correction if there is one.

THE WITNESS: This book gives capacity. I think there must be two publications by this Association.

By MR. DICKINSON:

Q. There are two; but this one deals with capacity?

A. It deals with capacity.

Q. Then you were mistaken so far as this book was concerned?

A. I was in error.

Q. Mr. Corey, state whether or not the capacity of the Open Hearth steel mills that were in process of construction by The Tennessee Coal, Iron & Railroad Company and planned to be constructed by it, when taken over by the United States Steel Corporation, would have made it a strong competitor of the other producers of rails in the United States.

MR. SEVERANCE: I object to that as purely speculative. It would depend upon the question as to whether the mills were in fact ever completed; as to the manner in which they were built and the manner in which they were operated by the owners.

By Mr. Dickinson:

Q. State whether or not those mills were modern that were being constructed, or were constructed on antiquated plans. Were they up to date?

A. They were fairly modern.

Q. Those that were being constructed, was there any material change in the plan and character of them after you took them over?

A. My recollection is that there were some considerable changes made.

Q. In the essential character of their construction or not; if so, in what respect?

A. I do not think I can answer that any more fully than I have. There were changes made.

Q. What was the position, Mr. Corey, of the Tennessee Coal, Iron & Railroad Company in regard to serving the territory contiguous to it,—the railroads, I mean, in the South and Southwest? State whether or not that gave them any advantage over the eastern producers,—such producers as the Carnegie Company.

A. It was a favorable location for the South and Southwest.

Q. State whether or not, since the taking over of the Tennessee Coal, Iron & Railroad Company and its completion and operation under the control of the United States Steel Corporation, it has or not supplied very largely the South and Southwest territory in steel rails.

A. It has.

Q. Did you know, Mr. Corey, before the acquirement of the control of the Tennessee Coal, Iron & Railroad Company, that Mr. Harriman had given to that company, or the Harriman lines had, an order, shortly prior to the taking over of the company, of approximately 157,500 tons of steel rails?

A. I knew that the Harriman lines had given a large order to the Tennessee Coal, Iron & Railroad Company. The tonnage I do not recollect.

Q. Was that known generally or not to the officers and directors of your company?

A. It was known to the officers, yes.

Q. State whether or not it was a matter of discussion

among them and whether or not the question of prospective competition from the Tennessee Coal, Iron & Railroad Company was a matter of discussion among them prior to the taking over of that company.

A. I do not recollect.

Q. I call your attention to the minutes of the Carnegie Steel Company of September 13, 1909, Government Exhibits Printed Vol. II, page 544 (reading):

"Mr. Bope: I would like to summarize a little to show our situation.

"First, as to rails: We have tonnage enough on the books now to run us until the first of October at a rate of about 12,500 tons per week, but do not see anything ahead at present for October. While it is true that very heavy rail buying is going on, very little of it is coming to us. Tennessee has booked handsomely, and, I am told, are filled up practically to April 1st. In addition to a large export tonnage they have taken such business as 28,000 tons for the Southern Railway and good sized orders for other roads. Illinois is filled up for all of this year at least. The Harriman lines are figuring on a big tonnage, but it will all go to Illinois and Tenneseee. The eastern roads, where we must look for tonnage, have not yet placed any orders for next year, have not even asked for a place, although we are told the Penna. is figuring on a very large tonnage. We do not, of course, want anything to occur to compel us to shut down Edgar Thomson, because it is by keeping it running that we are able to pick up the small quick delivery orders, a number of which are in the market and of which we have taken quite a few."

Then, again, the minutes of the Carnegie Company of November 15, 1909, Government Exhibits Printed Vol. II, page 546 (reading):

"Mr. McCausland: Are Jones & Laughlin providing any rail capacity at their Alliquippa plant?

"Mr. Bope: I have heard both that they are and are not. I think it would be a foolish thing to do to put in a rail plant as they would be worse off than we are, and if they have studied the situation it is not likely they will do so. Of course, if the Ohio is slackwatered this would ma-

terially assist them, but even so Tennessee would have the call on most of the southwestern business. Bethlehem seems to be well fixed on rails, but it is the only one of the eastern plants in this shape. Pennsylvania is shut down ostensibly for repairs, but we know it is on account of lack of orders.

"In other lines our condition is just the reverse. We have 951,000 tons of business actually on the books to-day, which is a tremendous tonnage, and it is all *bona fide*. There is not a pound of it that is speculative, and we feel that our contract obligations are as safe as the orders on the books." * * *

What do you know, Mr. Corey, as to this statement that "it would be a foolish thing to put in a rail plant, as they would be worse off than we are." In what respect was the Carnegie Company bad off in respect of rails?

A. On account of location only.

Q. As compared with what company was it bad off in regard to its location?

A. As compared with both the Illinois and Tennessee.

Q. By "Tennessee" you mean the Tennessee Coal, Iron & Railroad Company?

A. Yes.

Q. Do you know, Mr. Corey, what in 1905 in open hearth steel rails in tonnage the United States Steel Corporation subsidiaries produced?

A. I do not.

Q. State whether or not it was large or small in proportion to the whole production of steel rails by the subsidiaries of the corporation.

A. Small.

Q. State whether or not by 1910 there had been a large increase in the production of open hearth rails by the subsidiaries of the United States Steel Corporation.

A. There had been an increase.

Q. What concern or concerns mainly conduced to that increase; which of the subsidiaries mainly manufactured and brought about that increase?

A. The Indiana Steel Company.

Q. How about the Tennessee Company and open hearth. The period I ask you about is from 1905 to 1910.

A. You asked me specifically about 1910.

Q. Yes, I know, but I speak of the increase. Now I will ask you for the increase between 1905 and 1910, whether or not the Tennessee contributed largely to it.

A. The acquisition of Tennessee did increase the tonnage of open hearth rails, but the building of the Gary plant for the Indiana Steel Company increased the production more than double the amount the Tennessee increased.

Q. Do you know how much the Steel Corporation produced of open hearth steel in the year 1910—the aggregate?

A. I do not.

Q. Do you know what proportion that constituted of the total production of open hearth rails in the United States?

A. I am speaking not of production, I am speaking of capacity.

Q. I was speaking of production.

A. No, I could not answer that; I will withdraw my answer.

MR. SEVERANCE: No, you need not withdraw the answer, it will stand as he understood your question.

MR. DICKINSON: That stands as an explanation, of course.

By MR. DICKINSON:

Q. Now, when did the Tennessee Mill get in full operation in open hearth rails; when were they completed and put in full operation? I don't mean the exact date, but about what year?

A. I could not say when the mills were put in full operation, because that would depend entirely upon the demand, but they were completed in about a year's time.

Q. After you took them over.

A. After we took them over.

Q. When was the Gary open hearth plant completed?

A. I could not state that. Haven't you a record here?

Q. I have not it here, no; was it before or after?

A. After.

Q. How long after, about?

A. I would rather not answer that, because I am merely

making a guess; it is easy to get that information and get it correctly.

Q. I thought perhaps you knew. At the time you took over the Tennessee Coal, Iron & Railroad Company, what rail mills controlled by the United States Steel Corporation were then making open hearth rails?

A. Both Illinois and Carnegie were able to make open hearth rails, but to a limited extent.

Q. How long before they enlarged their plants, if they did, for making open hearth rails, after the taking over of the Tennessee Company—were they enlarged to any considerable extent?

A. The Carnegie is enlarging to-day to take care of that requirement. The Illinois Steel Company through a subsidiary company, the Indiana Steel Company, built an entirely new modern plant to take care of the demand for open hearth rails.

Q. When was that done?

A. My recollection is that the rail department of the Indiana Steel Company was completed in 1909.

Q. The Tennessee Company then was in operation before that, was it?

A. It was.

Q. Under your control?

A. Certainly.

Q. Did you have any producer of open hearth rails as large as the Tennessee Company before the Gary plant was put in operation; I mean between the time of the acquisition of the Tennessee Company and the time of putting the Gary plant in operation, did you have any other concern that was producing as many open hearth rails as the Tennessee Company?

A. No, sir.

Q. What was the production of the Indiana plant or the capacity either, if you know, I mean after it was built up as you state.

A. It has an estimated capacity of 1,000,000 to 1,200,000 tons of rails per year.

Q. I call your attention to pages 632 and 635, printed Gov-

ernment Exhibits, Volume II, in which the following appears, which I will read.

I will read from page 635, Volume II, of the printed Government Exhibits.

MR. SEVERANCE: Whose statement is this?

MR. DICKINSON: This is the statement of Mr. Bope, the Chairman:

"That the south is improving rapidly and that there could be built up a large business in that section he believes there is no question,"—

MR. SEVERANCE: Pardon me, Judge. I know you want to be accurate.

MR. DICKINSON: I surely do.

MR. SEVERANCE: If you will look at the top of page 633, you will see that was a statement by Mr. Burr, that you are reading.

MR. DICKINSON: Yes; I see. Instead of being made by Mr. Bope, it is by Mr. Burr. I thank you for calling my attention to that.

MR. SEVERANCE: Yes; he is the Tennessee Coal, Iron & Railroad Company man.

MR. DICKINSON: Yes and your man at that time.

MR. SEVERANCE: And he thinks well of his property.

MR. DICKINSON: He is level-headed.

I read from page 635, Government Exhibits, Volume II:

"That the south is improving rapidly and that there could be built up a large business in that section he believes there is no question, because the people of the south prefer to deal with mills located in the south. But if increases are made by them or new mills come into that section with the idea of providing material on any other than a reasonable basis as compared with other manufacturing centers, that is, of charging Pittsburg or Chicago prices plus the freight, he believes that it would be useless to do so, and it would be better for them to remain in the pig iron business. In other words, these estimates are based upon making Birmingham a basing point and using the freight rates now in effect to the various points."

Mr. Severance: Now, will you not read a little further? What follows modifies what he says.

Mr. Dickinson: Certainly (continuing reading):

"However, he does not want to go on record that they will be able to make finished material at as low a cost as Pittsburg or Chicago for a long time at least, and he thought estimates should not be based upon the record up to this time, because they have not had either the equipment or the tonnage to shoe (sic) the costs that are possible; but that the tonnage can be had he has no doubt, and if given the proper equipment he believes they will be able to make a very excellent showing as to cost. As a matter of fact, their cost on rails at Ensley for the last three months has been under $20, and they have not been running half time."

What is meant, Mr. Corey, by prices being based on Pittsburg?

A. The Pittsburg base was generally recognized as a basing point, and sales were made at a certain price Pittsburg plus freight.

Q. Suppose one of your concerns away from Pittsburg, in another state, sold to a party not at Pittsburg. State whether or not you mean by that that they paid the price plus the freight from where the manufacturing took place or the price plus the freight from Pittsburg, without regard to where the manufacturing took place.

A. They paid the equivalent to the Pittsburg base, plus freight, regardless of where it was manufactured.

Q. You had plants at Youngstown, did you?

A. Yes.

Q. Suppose your Youngstown plant sold to a party in St. Louis; then would the purchaser pay the uniform price at the mill, which applied everywhere, and add to that the freight from Pittsburg to St. Louis, rather than the freight from Youngstown to St. Louis?

A. That is my recollection.

Q. How long did that system prevail in the sale of products of the subsidiaries of the United States Steel Corporation?

A. My recollection is that that has been a custom that has

been deviated from from time to time, but has generally been the custom for all of the steel companies regardless of whether they were Steel Corporation mills or any other manufacturers. The Pittsburg base was recognized as a basing point for all mills.

MR. SEVERANCE: Pardon me, Judge. I think you asked him how long that had existed, and he did not answer that.

(By request, the stenographer repeated the last question.)

MR. DICKINSON: I see it does not answer it definitely.

MR. SEVERANCE: It existed before the corporation was formed, and this would indicate that it was something new.

By MR. DICKINSON:

Q. I will ask you whether that has been a practice ever since the formation of the United States Steel Corporation.

A. Before and since. It is a time-honored custom.

Q. Were any of these sales made (I am not referring to rails now) for delivery by the seller at the plant or the place of business of the buyer?

A. I do not believe I can answer that question, Judge.

Q. Was Birmingham ever made a basing point?

A. It had not been up to the time I left the Steel Corporation.

Q. Had or not that question been agitated and considered —what would have been the effect upon the southern trade if Birmingham had been made a basing point?

A. In what particular?

Q. To the purchaser; would it have been to the advantage or disadvantage of southern purchasers?

A. It would have been to their advantage.

Q. It would have been to their advantage?

A. Certainly.

Q. Now, Mr. Corey, I call your attention to a meeting of the General Managers of Sales, on November 20, 1908, Volume II, page 632, Government Exhibits:

"INCREASED FINISHING CAPACITY TENNESSEE COAL, IRON & RAILROAD COMPANY.

"The Chairman called attention to a map recently prepared by Tennessee, a copy of which has been sent to all Consti-

tuent Companies, which indicates that all the territory south of practically a straight line from Norfolk across the country, including the Pacific Coast, could be supplied from Birmingham as well, or better, than from Pittsburg or Chicago, based upon common freight rates.

"Mr. Burr explained this is based upon an entirely all-rail proposition. The map was prepared at the request of their Traffic Manager to determine the points at which they have as low, or lower, freight rates as Pittsburg or Chicago on the same class of material. It has been submitted to the various traffic managers, and gone over very thoroughly, and while a few exceptions might be found, altogether he thought it is pretty accurate. It was prepared primarily to determine where Tennessee might do business if it is advisable to put additional finishing mills in that section. Mr. Corey recently stated that he expected within a period of five years Tennessee would be out of the market as a seller of pig iron, and as they are now increasing their pig iron capacity it is felt by them that something should be done in the direction of starting to increase their finishing capacity. His president called upon him to furnish data and recommendations along this line, and he has now been requested to bring this matter before this Association."

State, Mr. Corey, whether or not business was increasing in the south at that period, whether the south was growing in prosperity—I mean not merely the south proper, but the lines drawn from Norfolk west straight across, south of that line.

A. That had no bearing on that case.

Q. On what case?

A. On increasing the finishing mills of the Tennessee Coal & Iron Company and giving up the selling of pig iron.

Q. I am just asking you generally your knowledge of that section of the country, and whether or not it was growing in prosperity.

A. It was.

Q. And increasing its capacity to use iron and iron products?

A. Certainly it was, the same as the balance of the country.

Q. I will ask you whether or not on a percentage of in-

crease it was not at a greater ratio than the balance of the country.

A. I would say not.

Q. Have you looked at the statistics on that?

A. I have not recently, but I did at the time; we had the entire country charted.

Q. And do you recall now any definite information with regard to that, or are you just speaking generally?

A. I am just speaking generally, but I have no recollection that the south was growing more rapidly than the west and middle west.

Q. What do you mean by growing; do you mean in population or manufacturing enterprises, or all combined?

A. All combined, principally population.

Q. Was there any competitor of the Tennessee Coal, Iron & Railroad Company in the making of steel, located in the south?

A. Yes; the Southern Steel Company was a competitor.

Q. Were they manufacturing to any considerable extent?

A. No.

Q. Not a strong competitor?

A. Yes.

Q. With the exception of that, state whether the Tennessee Coal, Iron & Railroad Company, so far as the southern field was concerned, had the field to itself; I mean so far as competition from manufacturers located there was concerned, it had the field to itself?

A. They had.

Q. Mr. Corey, state whether or not there was an armor pool.

A. At what period?

Q. Well, at any period since the formation of the United States Steel Corporation.

A. I could not say definitely whether there had been one since the formation of the Steel Corporation.

Q. I will call your attention in the minutes of the Board of Directors of the Carnegie Steel Company, May 5, 1902, Government Exhibits, Vol. II, page 472 and page 473, to the following:

"ARMOR PLATE PLANT IN JAPAN.

"MR. COREY: The question of the building of an Armor plant in Japan has been up a number of times. The report now comes to us from England that the Japanese Parliament has voted the sum of £680,000 for the purpose. The English Group of the Armor Pool feel satisfied that if the Armor combination would agree to erect a plant over there, and operate it for a term of years, the Japanese Government would not build their own plant—it being agreed that at the expiration of the term, the Government would buy the plant at a certain figure. It is desired to have the plant built by the Armor Pool, our share being £57,000. Personally, I am not in favor of the scheme. If Japan wants to build a plant it will take at least ten years before it can be completed and put in successful running operation. I do not feel we would be justified in recommending the expenditure of any money for such a purpose.

"It is quite likely, in case we refuse, the other members of the Armor combination would go ahead, leaving the American group out—to which I can see no particular objection."

I will ask you whether that refreshes your memory.

A. I am enlightened, sir. What date was that?

Q. That is in 1902; May 5th, 1902.

State who composed the armor combination that you there refer to.

A. What is that?

Q. What American mills were in it?

MR. SEVERANCE: You are asking for his personal knowledge, of course.

MR. DICKINSON: Well—

MR. SEVERANCE: I object, if the question is not addressed to his personal knowledge, and not calling for something that has been told him by somebody else.

MR. DICKINSON: I suppose Mr. Corey will not tell us anything that he does not know.

MR. SEVERANCE: That is an easy thing and a polite thing to say, Judge; but I make the objection.

MR. BOLLING: You should not ask for anything which he does not know personally, Judge.

MR. SEVERANCE: I am entitled to make the objection that the question should be limited to things that Mr. Corey has personal knowledge of; and I make that objection to the question unless he is so limited.

MR. DICKINSON: You cannot object to the question. You may object to the answer if it is improper.

MR. SEVERANCE: I not only can object, Judge, but I have objected.

MR. DICKINSON: Of course, I cannot keep you from doing that.

(The stenographer repeated the question under discussion as follows:)

"Q. What American mills were in it?"

THE WITNESS: The Carnegie Steel Company and the Bethlehem Steel Company.

By MR. DICKINSON:

Q. How about the Midvale?

A. I could not state definitely whether they were a party to any understanding or not.

Q. When did the Carnegie Steel Company get into this armor plate pool?

A. I could not state that.

Q. Was it in the armor pool at the date here mentioned where you refer to the armor pool?

A. It certainly must have been, from that statement I made.

Q. Is there any armor pool now?

A. Not to my knowledge.

Q. Was there any armor pool, to your knowledge, at the time when you retired from the presidency of the Steel Corporation?

A. No.

Q. What is the latest period that it existed in respect to which you have knowledge?

A. 1904 or 1905.

Q. This period we have given here is May 5, 1902; how long before that was the Carnegie in such a pool?

A. A considerable length of time, but I could not state.

Q. Now, Mr. Corey, please state what was the agreement or understanding of those in the pool with respect to armor, the making of it, the price of it or the question of bidding or refraining from bidding, or the division or apportionment of orders.

A. I was not familiar with any of those details.

Q. You had been with the Carnegie Company, had you?

A. Yes. I was with the Carnegie Company at that time.

Q. Did you hear the matter discussed in the meetings of the directors?

A. No; I have no recollection of hearing it discussed before the directors.

Q. Did you hear it discussed in any committee meetings or by the officers of either the Carnegie Company or the United States Steel Corporation?

A. I have heard it discussed by officials of the Carnegie Steel Company.

Q. By what officials?

A. I do not remember. It was only in a general way.

Q. How did this agreement operate in respect to competition in bids? Did it restrict it or not?

A. I told you that I was not familiar with the details or the working of the system.

Q. Who was familiar with it?

A. The gentleman most familiar with it was the foreign representative of the Carnegie Steel Company, Col. Millard Hunsiker.

Q. He was in London, was he?

A. He was in London.

Q. Did he make any reports to the Carnegie Company in regard to what arrangements were entered into?

A. Yes.

Q. How were those reports made; in writing or verbally?

A. I believe both.

Q. Did you ever see any of the written reports?

A. I have no recollection of seeing any of the written reports.

Q. Were they kept or destroyed?

A. I presume they were kept.

Q. Who would be the custodian of them at that time; at the time that you knew of these reports being made?

A. I really could not say, unless it were the Secretary of the company.

Q. Who was the Secretary?

MR. SEVERANCE: The records will show, Judge.

MR. DICKINSON: He may know.

THE WITNESS: Mr. Blackburn.

By MR. DICKINSON:

Q. What are his initials?

A. W. W.

Q. Where is he now?

A. In Pittsburgh.

Q. Is he Secretary of the company now?

A. I believe so.

Q. You say you saw some of those reports, or not?

A. I would not say definitely that I ever did see a report.

Q. Did you hear them read?

A. No; I never heard them read.

Q. Did you hear the contents discussed?

A. Yes; we discussed the matter frequently.

Q. With whom did you discuss it?

A. With Col. Hunsiker, when he was here.

Q. You discussed it with him?

A. Yes, sir.

Q. And he was your agent, representing you in foreign countries?

A. In foreign countries.

Q. Did he state, or not, that he had entered into an agreement or understanding with foreign makers of armor plate?

MR. SEVERANCE: I object to that, as incompetent and hearsay, and as leading.

THE WITNESS: I would not like to state definitely my recollection of any conversation I had. That has been a long time ago.

By Mr. Dickinson:

Q. What was the general scope and purpose of those agreements?

Mr. Severance: I object to that, as the witness has already stated that he is not familiar with the agreements and therefore he cannot know their general scope.

Mr. Dickinson: I want to see if he knows their effects.

The Witness: I do not feel qualified to answer your question, Judge.

By Mr. Dickinson:

Q. To whom did the Carnegie Steel Company sell armor plate?

A. My recollection is that they sold to Russia and sold to Turkey, and to the United States Government. They would sell to anyone to whom they could sell.

Q. Do you know what foreign concerns—I do not mean the names of them—but in what countries foreign concerns were situated that were parties to this armor plate agreement?

A. Germany, France and England.

Q. During the period of the existence of this armor plate agreement, did those concerns compete with you for Government bids in this country?

Mr. Bolling: It is not clear that the competition was open to them, is it?

By Mr. Dickinson:

Q. I am asking if they competed.

A. I have no recollection of their competing now.

Q. If they had, would you have been likely to know it?

A. Yes.

Q. During that period was any armor plate furnished to the United States Government by any concern other than American makers of armor plate?

A. No. I believe it is specified by law that armor plate of American manufacture shall be used.

Q. Was that so throughout that whole period?

A. That is my recollection.

Q. Do you state that as a fact?

A. No; I state that as my recollection. I would not be entirely clear. That can be confirmed.

Q. During that time, did your company bid on armor plate in England—during the time of this armor plate agreement?

A. I do not know.

Q. Did you furnish any armor plate in England?

A. I do not know that, either.

Q. Did you furnish any in Germany?

A. I do not believe so.

Q. Were the Russian makers of armor plate in this agreement?

A. I believe there were no Russian manufacturers of armor plate at that period.

Q. Did you sell to Russia? I believe you stated that you did?

A. Yes.

Q. Mr. Corey, did you know of a company called the Harvey Patent Company?

A. Yes.

Q. What was that company?

A. That was a company that controlled certain patents for face-hardening the armor plate.

Q. Was it an American Company—a United States Company?

A. My recollection is that there was both an American Company and a foreign company.

Q. Was the Carnegie Company a stockholder in that company?

A. Yes.

Q. Through what concern?

A. I could not say.

Q. When did it become a stockholder in that company?

A. I could not answer that either.

Q. Was the Bethlehem Company a stockholder in that company?

A. I do not know.

Q. Did the Carnegie Company have any agreement with

any manufacturer of rails under which the Carnegie Company was to be paid sums of money by such manufacturers to stay out of the business of making rails?

A. Not to my knowledge.

Q. The period I am asking you about is preceding the formation of the United States Steel Corporation. Your answer would be the same as to that?

A. Exactly; because I was works manager during that period.

Q. That would not come within your province?

A. No.

Q. This is virtually answered, but I will ask you whether you, of your own knowledge, knew whether the Lorain and Johnson Companies paid to the Carnegie Company any money for the Carnegie Company to stay out of the rail business.

MR. SEVERANCE: When, Judge?

MR. DICKINSON: At any time?

MR. COLTON: Prior to the formation of the United States Steel Corporation.

By MR. DICKINSON:

Q. Prior to the formation of the United States Steel Corporation?

A. I have no knowledge of such arrangement.

Q. Have you any information derived from any of the officers of the Carnegie Company?

A. I have not.

Q. Were there any periods prior to the formation of the United States Steel Corporation during which the Carnegie Company did not make girder rails, extending over any considerable period of time?

MR. SEVERANCE: Did they ever make them?

THE WITNESS: That is what I was trying to think.

MR. SEVERANCE: I know you do not want to ask a catch question of the witness.

MR. DICKINSON: I could not catch him.

MR. SEVERANCE: You might try, you know.

MR. DICKINSON: No, I think I have got that much discrimination and judgment.

THE WITNESS: I cannot recollect when they did make girder rails.

By MR. DICKINSON:

Q. Did they have a mill at which they could make girder rails?

A. No, I do not know of them being equipped to make girder rails.

(Whereupon at 12:30 o'clock a recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION.

At the expiration of the recess the hearing was resumed.

WILLIAM E. COREY

a witness produced on behalf of the United States, having been previously sworn, testified further as follows:

DIRECT EXAMINATION (Continued),

By MR. DICKINSON:

Counsel for the Government presents the Iron Age for the year 1907, and offers in evidence pages 1346, 1347 and the first column of page 1348 down to and including the words "coke, 201,700 tons." This is dated May 2nd, 1907.

MR. SEVERANCE: I object to that as incompetent, and immaterial.

It is agreed by counsel this may be copied with the same effect as if the original Iron Age publication was filed.

MR. DICKINSON: This is offered for the purpose of showing this publication was made in the Iron Age at that time.

(Paper referred to received and marked "Government Exhibit No. 341, January 23, 1913.)

By MR. DICKINSON:

Q. Mr. Corey, prior to the acquisition of the control of the Tennessee Coal, Iron & Railroad Company by the United

States Steel Corporation did or not the United States Steel Corporation have any investigations made and reports upon the property of the Tennessee Coal, Iron & Railroad Company?

A. No.

Q. Were any investigations and reports made to the United States Steel Corporation or any of the subsidiaries of the United States Steel Corporation in regard to properties and plants of the Tennessee Coal, Iron & Railroad Company prior to the acquisition of the control of that company by the United States Steel Corporation?

A. Not to my knowledge.

Q. Have you any knowledge of a report made by Charles Catlett and another on that subject?

A. Yes, sir.

Q. To whom was that made and when was it made?

A. I do not know to whom it was made, but I saw the reports. My impression is it was after the acquisition.

Q. Do you mean to say that you saw it after the acquisition or that the investigation and reports were made after the acquisition?

A. My recollection is that the investigation and reports were made after the acquisition.

Q. Do you know whether or not any officers or agents of the United States Steel Corporation or any of the subsidiaries of the United States Steel Corporation made any investigation as to the holdings of the Tennessee Coal, Iron & Railroad Company or its plants prior to its acquisition by the United States Steel Corporation?

A. Not to my knowledge.

Q. Do you know whether such reports were not made or merely that you have no knowledge of them?

MR. SEVERANCE: He has answered that question. He said not to my knowledge. That is all he can say, isn't it?

MR. DICKINSON: I don't know. He may say something.

THE WITNESS: I do not believe that any report was made.

By MR. DICKINSON:

Q. If there was, you don't know about it?

A. No, at least I do not recollect of it.

Q. Do you know whether or not Mr. Gayley made any recommendations in regard to the purchase of that property?

A. I do not.

Q. Mr. Corey, did the United States Steel Corporation through its subsidiaries at times or at any time cooperate with the Bessemer Pig Iron Association with which Mr. Butler of Youngstown was connected and with which other manufacturers of pig iron were connected, towards the maintenance of the price of pig iron?

MR. SEVERANCE: I object to that as leading, incompetent and immaterial; I don't know what it means—co-operating; the question I think is misleading, not understandable; it is certainly a leading question.

THE WITNESS: I answered that question this morning the only way I know how to answer it relative to the purchase of pig iron.

By MR. DICKINSON:

Q. Did any representative of the United States Steel Corporation or of any of its subsidiaries meet with the Association with which Mr. Butler was connected, the Bessemer Pig Iron Association at any time with your knowledge, where the question of the price and maintaining the price of pig iron was mooted or acted on.

MR. SEVERANCE: I object to that question unless it is confined to a meeting at which Mr. Corey was such representative, or at which he was present, and object to any answer to the question or as to any information he may have acquired from anyone else, as that would not be legal evidence.

THE WITNESS: Not to my knowledge.

By MR. DICKINSON:

Q. Do you know whether or not any official or representative of the Carnegie Steel Company or the United States Steel Corporation at any time advised the said Association that they intended to close down any of their furnaces, and whether or not in pursuance of such notice any of the furnaces of the Carnegie Steel Company, or any of the other subsidiaries of the United States Steel Corporation were closed down?

MR. SEVERANCE: I object to that as leading, as indefinite, immaterial and irrelevant.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. When was this done?

MR. SEVERANCE: I make the same objection.

THE WITNESS: I cannot recollect.

By MR. DICKINSON:

Q. Was it done on more than one occasion?

A. No, I do not recollect. I only recollect one occasion when I did it myself.

Q. What year was that?

A. I cannot recollect that either.

Q. I will ask you whether or not in the fall of 1903 and during the year 1904 there was such closing down of furnaces in pursuance of such notice or advice.

MR. SEVERANCE: The witness has already stated he did not know when it was and therefore the question is suggestive and leading, and objectionable for that reason, irrelevant and immaterial to any issue in this case.

THE WITNESS: I have answered that I cannot recollect.

By MR. DICKINSON:

Q. Well, fix the time as near as you can, Mr. Corey.

MR. SEVERANCE: I make the same objection. The witness says he does not know when the time was; this is direct examination, not cross examination presumably.

MR. DICKINSON: It is a well settled principle of law where we call a witness who is a director of the defendant, we are not confined to the strict rules of examination. That is as well settled as anything can be.

MR. SEVERANCE: I am much obliged to you, Judge, for posting me.

MR. DICKINSON: I am not posting you, but I am perfectly willing to take the risk of the questions before the Court.

THE WITNESS: I would answer it if I could. I could not tell you the period at all.

By MR. DICKINSON:

Q. Was that closing down upon notice or understanding with that Association or any other makers of pig iron?

MR. SEVERANCE: I object to that as leading, incompetent, irrelevant and immaterial, and the witness has already intimated that he has no recollection on the subject.

THE WITNESS: I do not believe it was.

By Mr. Dickinson:

Q. Is that the only instance in which any of the furnaces of the Carnegie Company that made pig iron were closed down?

Mr. Severance: The objection to that is that he has not said that they were closed down at that time; he said he did not know. You are assuming that he has answered the question exactly opposite to the way he did answer it.

By Mr. Dickinson:

Q. Mr. Corey, did you not say that you recalled one instance, at a time you did not give, when furnaces were closed down?

A. I did.

Q. Was that the only time now I ask that you recall that the furnaces of the Carnegie Company were closed down?

A. The only time I recollect under similar conditions.

Q. Well, what were those conditions?

A. Just what we have mentioned there.

Q. I do not know that I understand what you have in mind. I would like you to explain what you mean by the term "similar conditions".

A. I told Mr. J. G. Butler on—I advised Mr. J. G. Butler that the Steel Corporation or its constituent companies proposed to close a number of blast furnaces, and I thought it would be well for them to do the same.

Q. Did they do the same?

A. To the best of my recollection, they did close some furnaces.

Q. That was after the formation of the United States Steel Corporation, was it?

A. Yes.

Q. Was there or not a pig iron committee in which the Carnegie Steel Company and other subsidiaries of the United States Steel Corporation were represented by D. G. Kerr and others?

A. I fail to recollect any committee that Mr. Kerr represented the Steel Corporation or Carnegie Company in.

Q. Was there any pig iron committee upon which the Carnegie Steel Company or the subsidiaries of the United States Steel Corporation were represented by any one?

A. There was.

Q. Who composed that committee and whom did they represent, what concerns?

A. I doubt if I could give the names of the firms, but it represented the majority of the pig iron manufacturers in the North.

Q. Did you get reports verbal or otherwise of what was done at this meeting?

A. Well, as I was chairman of the committee it was unnecessary to have any reports made; I was there.

Q. Well now, what was done at those meetings, Mr. Corey?

A. My recollection is that there was nothing practically accomplished at any of the meetings of the pig iron and raw material committee.

Q. Was there any discussion at those meetings of closing down blast furnaces?

MR. SEVERANCE: I object to that as leading, incompetent, immaterial; and, as no result followed, it cannot have any bearing on this case. The witness has just stated there was nothing accomplished.

THE WITNESS: The general conditions of the iron and steel trade were discussed openly. I do not recollect anything particular of paramount importance.

By MR. DICKINSON:

Q. State, Mr. Corey, whether or not the production of pig iron was curtailed during the years 1903 and 1904 as a result of those meetings.

MR. SEVERANCE: I object to that as leading, incompetent, immaterial; the witness has already stated that nothing resulted from the meetings.

By MR. DICKINSON:

Q. What period were you having in your mind, Mr. Corey?

A. I believe it was 1908.

Q. Well, I want to address your attention to whether or not there were any such meetings in 1903 and 1904.

A. Not to my knowledge.

Q. Did you attend the meetings of the structural and plate associations?

A. At times.

Q. How often did you attend them; regularly?

A. No, irregularly.

Q. Irregularly?

A. Yes, sir.

Q. Were you at a number of the meetings?

A. Yes, sir.

Q. State how those associations were constituted, Mr. Corey, as to the question of penalties and allotments.

MR. SEVERANCE: Objected to as not the best evidence; you have already introduced copies of a written contract in the structural case, as I recall. I also object to it as incompetent and immaterial.

THE WITNESS: I do not recollect the workings of those associations.

By MR. DICKINSON:

Q. Did you have agreements?

A. Yes.

Q. Did you operate under those agreements?

MR. SEVERANCE: Will you fix the date to which you refer?

By MR. DICKINSON:

Q. When did you first begin attending those meetings?

A. I believe in 1901.

Q. How long did you continue to attend them?

A. At varying intervals up to 1904 or 1905. I cannot get the date right.

Q. There was a time when they were abandoned in that way, was there not; and down to that time did you attend them?

A. There was a time when they were abandoned.

Q. Yes; 1904 or 1905, or whatever that time was.

A. Yes.

Q. You attended them off and on down to that time?

A. I did.

Q. Who else attended those meetings? Name some of those who attended them when you were there, and whom they represented.

A. Mr. Willis King represented Jones & Laughlin; Mr. Felton represented the Pennsylvania Steel Company; Mr. Powell Stackhouse represented the Cambria; Mr. Clark rep-

resented the Lackawanna, and Mr. Schwab represented the Bethlehem.

Q. Did the agreements under which you operated during that period provide for penalties and allottments?

Mr. Severance: I object to that as not the best evidence, and as incompetent, immaterial and leading.

The Witness: I do not recollect of any penalties being paid.

By Mr. Dickinson:

Q. Were there any allottments by which each one was authorized and permitted to make a certain percentage, 100 being the total?

Mr. Severance: I make the same objection as to the last question.

The Witness: There was.

By Mr. Dickinson:

Q. Did you see the agreements? Were they in writing?

A. I have no recollection of ever seeing the agreements.

Q. Did you understand the character of the agreements as your company was operating under them?

Mr. Severance: I object to that as not the best evidence, and as leading and immaterial, and incompetent. You have already introduced in evidence, Judge, certain written agreements, and I object to your interrogating this witness as to the contents of those writings which you yourself have previously offered in evidence.

By Mr. Dickinson:

Q. I am questioning you, Mr. Corey, as to your operations.

A. (Interposing). Exactly.

Q. (Continuing)—under certain understandings with other makers of structural material and plates, and whether or not you had understandings and agreements with them, and met with them from time to time, and whether or not the understanding under which you operated provided for allotments and penalties.

Mr. Severance: I object to that as leading and suggestive.

The Witness: I answered that question once.

By Mr. Dickinson:

Q. How do you answer it now?

A. I answered that, that I had no recollection of any penalties being paid.

Q. Do you have any recollection as to whether the agreements or understandings under which you operated provided for penalties?

Mr. Severance: I make the same objection, that it is leading, and not the best evidence.

The Witness: I am not certain on that score, as to whether they provided for penalties or not.

By Mr. Dickinson:

Q. Mr. Corey, was it or not known to the executive officers of the United States Steel Corporation throughout the period that you have named that subsidiaries of that corporation were operating under such agreements as you have described?

Mr. Severance: I object to that as leading and suggestive, and indefinite, in that it does not fix any particular officer, and indefinite——

Mr. Dickinson: I will fix it before I get through, if you will give me an opportunity to do so.

Mr. Severance: You had better get it right now, if you are going to do so, and I will not have to make my objections.

Mr. Dickinson: You may make your objections, and I will ask my questions.

Mr. Severance: And I object further because it calls upon the witness to decide what is meant by "executive officers." That might mean a sales agent, or it might mean a Superintendent of a mill, or it might mean almost anything. It would depend upon the construction of the words.

(By request, the stenographer repeated the question under discussion as follows:)

"Q. Mr. Corey, was it or not known to the executive officers of the United States Steel Corporation throughout the period that you have named that subsidiaries of that corporation were operating under such agreements as you have described?"

THE WITNESS: I should like you to more fully define the question, Judge, and name the officers.

By MR. DICKINSON:

Q. During that period you were President of the Corporation, were you not?

A. I was.

MR. SEVERANCE: Just a moment. When did you become President, Mr. Corey?

THE WITNESS: In 1903.

By MR. DICKINSON:

Q. Who was Chairman of the Board?

A. E. H. Gary.

Q. Did he know about it?

A. He did.

Q. During the period that you attended those associations, as you have heretofore described, will you say whether or not at those meetings understandings were reached by the different members of that Association as to the maintenance by them of a uniform price for the same character of products?

MR. SEVERANCE: I object to that as leading, incompetent and immaterial. The proper question would be to ask him what was done at the meetings, and not suggest to him an answer. It also asks for the conclusion of the witness, instead of what was done and said by the parties present at the meeting.

(By request, the stenographer repeated the pending question as follows:)

"Q. During the period that you attended those Associations, as you have heretofore described, will you say whether or not at those meetings understandings were reached by the different members of that Association as to the maintenance by them of a uniform price for the same character of products?"

THE WITNESS: Yes.

By Mr. Dickinson:

Q. Mr. Corey, after these associations were discontinued, in a manner, whatever it was, in 1905, or about that time, state whether or not there were other meetings of manufacturers of plate and structural material or of their representatives.

A. I have no recollection.

Q. Do you know whether there were any meetings during that period, that is to say, during that period in 1905 down to the beginning of the Gary dinners, when subordinate committees or sub-committees representing various of the manufacturers of iron and steel products had meetings?

Mr. Severance: I object to that as leading and suggestive. The witness has already stated that he knew of no meetings of these manufacturers after the dissolution of the pools in 1905.

Mr. Dickinson: I do not think he has covered that at all.

Mr. Severance: Yes; that is the same question.

The Witness: I did answer that. I have no recollection.

By Mr. Dickinson:

Q. The first question was addressed to the meetings where you attended. Now I am asking—

A. (Interposing) I understand.

Q. (continuing)—whether there were any other meetings of sub-committees or subordinates.

A. I understand.

Q. You say you have no recollection of that?

A. No.

Q. I call your attention to the minutes of the Finance Committee of the United States Steel Corporation, held at the office of the Corporation in the City of New York on Tuesday, July 11, 1905, at two o'clock P. M.; present Messrs. Perkins in the Chair, Gary, Bacon, Ream, Rogers and Widener, as follows:

"The Chairman reported that the question of increasing the prices of structural steel had been under consideration by the different manufacturers and that he had recommended that action be postponed. On motion the recommendation was approved. On motion, duly seconded, the meeting adjourned."

Have you any knowledge of any such increase in prices of structural steel having been under consideration about that period?

A. At what time?

MR. DICKINSON: About July 11, 1905.

MR. SEVERANCE: I object to that as leading, and as immaterial. It appears on the face of the document from which counsel quotes that Mr. Corey was not present at the meeting.

THE WITNESS: I can answer that very clearly, Judge.

By MR. DICKINSON:

Q. Very well, answer, please.

A. I was not in the country at the time and knew nothing of it.

Q. Mr. Corey, following the first Gary dinner, state whether or not sub-committees were appointed by the general committee appointed at that dinner.

A. They were.

Q. Did they or not represent the various branches of the iron and steel production in the United States?

A. They were supposed to represent the various branches of the industry.

Q. To what extent in point of percentage of production did they represent those branches, speaking generally. State whether or not they included the majority in output.

A. Yes; I would say they represented the majority.

Q. What was the purpose and effect, Mr. Corey, of those committees on prices?

MR. SEVERANCE: I object to that upon the ground that the witness cannot know anybody's purpose but his own. He can know his own purpose or his own object or his own mind, but it is incompetent to ask him to testify what might have been in the minds of these other gentlemen who composed these committees.

MR. DICKINSON: Sometimes a man opens his mind and tells.

MR. SEVERANCE: You might ask what was said.

MR. DICKINSON: That would be a proper question for cross examination.

MR. SEVERANCE: If you would put proper questions, I would not have to make any objections, and you would not have to withdraw so many of them.

MR. DICKINSON: I have not withdrawn many.

MR. SEVERANCE: You have interrupted me before I have finished making my objection. I object to the question on the ground that it is incompetent and immaterial, and asking for the opinion of a mindreader.

(By request, the stenographer repeated the question under discussion, as follows:)

"Q. What was the purpose and effect, Mr. Corey, of those committees on prices?"

THE WITNESS: Can you not ask that question in another way?

By MR. DICKINSON: Yes, I can and will.

Q. State whether or not it was the purpose in the creation of these sub-committees to reach a general understanding as to prices of iron and steel products, and to bring about the maintenance of them.

MR. SEVERANCE: I object to that as leading. Judge Dickinson knows it is leading and an improper way to draft a question on direct examination.

MR. DICKINSON: You make your objections, without commenting on me. I am a little tired of that.

MR. SEVERANCE: And also as incompetent. You will get more tired, Judge, before you get through, if you keep on asking these questions in that form.

MR. DICKINSON: I will ask my questions in my own way, and we will discuss that later.

MR. SEVERANCE: We are helpless here. We have no court to rule. Judge Brown cannot rule on the form of a question and I have to make these objections.

MR. DICKINSON: You can make your objections without commenting on me, Mr. Severance.

MR. SEVERANCE: The question is suggestive, it is unfair in form for the reason that, instead of asking what was done at the meeting or what was said at the meeting or who were present at the meeting, counsel undertakes to sum up the

matter and asks the witness, on direct examination, to assent or dissent from his statement.

MR. DICKINSON: I am asking a man who was President of the United States Steel Corporation.

MR. SEVERANCE: He is not.

MR. DICKINSON: I say, "who was at that time." I am asking him what was the object and purpose and the effect of these committees.

By MR. DICKINSON:

Q. Now, if you know, Mr. Corey, I would like to have you answer that.

MR. SEVERANCE: Do you want us to go into the whole of that matter, on Cross Examination, and find out who was present and who took part in these discussions?

MR. BOLLING: If you want that, we can do it.

MR. SEVERANCE: If you want it you can get it.

MR. BOLLING: You can get the whole of it, if you want it.

(By request, the stenographer repeated the question under discussion, as follows:

"Q. State whether or not it was the purpose, in the creation of these sub-committees to reach a general understanding as to prices of iron and steel products and to bring about the maintenance of them."

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Did it bring about the maintenance of them?

MR. SEVERANCE: I make the same objection as to the last question.

THE WITNESS: For a temporary period only.

By MR. DICKINSON:

Q. Mr. Corey, state whether you at all times approved the policy of such maintenance of prices or whether you changed your personal attitude on that question at any period.

MR. SEVERANCE: I object to that as incompetent, irrelevant and immaterial; it certainly can make no difference what his personal attitude was.

MR. DICKINSON: Leave out the word "personal".

Question withdrawn.

By MR. DICKINSON:

Q. Mr. Corey, state whether or not before the open market on February 18th, 1909 you and officials of the Carnegie Steel Company were in favor of meeting market conditions and making a cut in prices.

MR. SEVERANCE: I object to that as incompetent, irrelevant and immaterial and leading, and assuming something as part of the question that is not in evidence.

THE WITNESS: I will answer that question for myself. I was.

By MR. DICKINSON:

Q. Did your view prevail, or were prices maintained or not, under the system of these committees, for a period longer than that?

MR. SEVERANCE: I object to that as leading, suggestive, incompetent and assuming something not in the evidence.

By MR. DICKINSON:

Q. Up to the time of the open market?

A. Prices were maintained for some time longer than I deemed advisable.

Q. How were they maintained, Mr. Corey? State whether or not they were maintained by cooperative action of the manufacturers of the various products as to which they applied.

MR. SEVERANCE: I object to that as leading, incompetent, immaterial and irrelevant.

THE WITNESS: They were not maintained by agreement.

By MR. DICKINSON:

Q. What do you mean by "agreement"? There was no contract?

A. Well, an agreement is an agreement, isn't it?

MR. DICKINSON: Well, there is some variation in views as to what actually constitutes an agreement. I want to know just exactly what you mean in that connection. Were there understandings as to what those prices would be?

MR. SEVERANCE: I object to that as leading, which counsel admits it is, and incompetent, immaterial and already answered.

THE WITNESS: Haven't you got that all on record in some of the other evidence?

By MR. DICKINSON:

Q. We are entitled, Mr. Corey, to your testimony.

A. Certainly you are, and I am willing to give it to you if there is either necessity or occasion.

Q. Of course, we will have to be the judges of that.

A. That is the reason I am appealing to you.

Q. I think it would be desirable for you to answer it. Now, will you please answer the question.

A. Are you going to insist on it.

(The stenographer thereupon repeated the question as follows:)

"Q. Were there understandings as to what those prices would be?"

THE WITNESS: There were.

By MR. DICKINSON:

Q. Were the prices maintained or not as a result of those understandings?

MR. SEVERANCE: If he knows. You want his personal knowledge, I suppose.

THE WITNESS: They were.

By MR. DICKINSON:

Q. Mr. Corey, can you give the membership of the Pig Iron & Ore Committee, that was appointed after the first Gary dinner; I believe you stated you were Chairman of it.

A. I would not say it was appointed after the first dinner; it was appointed some time, and I could not give you the names of the committee because it was quite a large committee.

Q. Was Mr. Samuel Mather, of Pickands, Mather & Company a member of that committee?

A. Yes.

Q. State whether or not Pickands & Mather were among the larger producers of ore outside of the United States Steel Corporation.

A. Yes, sir.

Q. Did you know Mr. Coulby of Pickands & Mather?

A. I did.

Q. After he became President of the Pittsburg Steamship

Company did he continue to be connected with Pickands & Mather?

A. Not to my knowledge.

Q. Do you know one way or the other of that?

A. I think I should know, but I do not believe that he was.

Q. Was Mr. Samuel Mather—did he become a director in the United States Steel Corporation?

A. Yes, sir.

Q. After he became director of the United States Steel Corporation did he continue to be connected with Pickands & Mather?

A. Yes.

Q. Did you know Mr. William G. Mather?

A. Yes, sir.

Q. Was he ever at any time President of the Ore Association?

A. Yes.

Q. Was he connected with the firm of Pickands & Mather?

A. I believe he was.

Q. Mr. Corey, was there not an association known as the Billet Association in 1903?

A. I believe there was.

Q. Did you know the members of that association?

A. I do not.

Q. Was the Carnegie Steel Company a member of it?

A. My recollection is they were.

Q. How about the Illinois Steel?

A. I could not answer.

Q. How about Jones & Laughlin Steel Company?

A. My recollection is they were.

Q. The Wheeling Steel & Iron Company?

A. The same.

Q. The Cambria?

A. I do not know.

Q. Pennsylvania?

A. Yes, my recollection is they were.

Q. Lackawanna?

A. I don't know.

Q. Maryland?

A. No.

Q. Republic Iron & Steel?

A. I would not venture a guess on those; it is a long time back, and I never attended any of the meetings.

Q. Did you get any reports of any of their meetings?

MR. SEVERANCE: I object to that as incompetent, and immaterial, and laying a foundation for more hearsay.

THE WITNESS: No, I believe not.

By MR. DICKINSON:

Q. I read you, Mr. Corey, from Government Exhibit 162, Volume 4, page 1487, which is a contract entered into the 1st day of July, 1903, by and between the Carnegie Steel Company hereinafter called the sellers, and the Pittsburgh Steel Company, hereinafter called the buyers, as follows:

"(1) The prices to be paid under this agreement for such billets shall be fixed at the end of each month for the deliveries of that month, and shall be determined by deducting Two Dollars ($2.00) per gross ton from the ruling price at which billets have been sold during that month by the Steel Billet Association or any member thereof, so long as said Association continues in existence, which price shall in no case exceed Twenty-five ($25.00) per gross ton for Billets delivered f. o. b. Buyers' works at Monessen and Glassport, Pa. during the term of this contract; and if such Steel Billet Association shall become dissolved then the price to be paid hereunder by the Buyers shall not exceed the lowest price at which the Sellers have delivered Billets during such month to others."

State whether or not that Steel Billet Association did in fact fix the prices, to be observed by the members of that Association, of selling billets.

MR. SEVERANCE: I object to that, for the witness has already stated he never attended a meeting of the Association and he does not know even the name of—he would not be able to testify to the names of only a portion of the members, therefore any information he may have on the subject is, as counsel well knows, purely hearsay and incompetent and immaterial.

By MR. DICKINSON:

Q. Will you please answer the question.

A. I cannot answer that, Judge; I don't know. But for

your information there I would judge that that was an Association the prices were reported to.

Q. It does not show here.

A. I know, but I cannot conceive how it could have been in the contract unless it was.

By MR. COLTON:

Q. To which prices were reported?

A. Reported to and made an average price for that purpose.

By MR. DICKINSON:

Q. That is just a surmise, I judge?

A. It is a surmise, but from reading that contract; otherwise it would never have been in the contract.

Q. Do you know, Mr. Corey, as to whether or not there was a contract between the Republic Iron & Steel Company on or about July 30, 1904, with the Pittsburgh Steel Company for approximately 110,000 tons of billets at $18.40 per gross ton, and whether or not that price was below the billet pool price, and whether or not such contract brought about trouble between the officials of the United States Steel Corporation and the Republic Iron & Steel Company?

MR. SEVERANCE: I object to that question on the ground that it is founded upon a statement which is diametrically opposed to the last answer made by the witness to the effect that the Billet Association was not a pool but merely an Association to which reports were made by different members, and it is leading, incompetent and immaterial.

THE WITNESS: I will answer that question, Judge; I have no recollection of a pool or a pool price on billets at that time.

Q. Well, leaving that out then, state whether or not you know of any such contract between the Republic Iron & Steel Company and the Pittsburgh Steel Company, and whether that led to any friction or difference between the United States Steel Corporation and the Republic Iron & Steel Company or any of the subsidiaries of the United States Steel Corporation.

MR. SEVERANCE: I object to that as leading and the ques-

tion is meaningless. If you say "leaving that out," it is meaningless, because the predominant feature of your first question was that there had been a sale made at less than a pool price. Now it appears that there was no pool and therefore there is nothing left to the question. I do not see how the witness can understand it.

THE WITNESS: I understand it perfectly, Mr. Severance, and I will say—read it again, please.

(The question was thereupon repeated by the stenographer as follows:)

"Q. Now, leaving that out then, state whether or not you know of any such contract between the Republic Iron & Steel Company and the Pittsburgh Steel Company, and whether that led to any friction or difference between the United States Steel Corporation and the Republic Iron & Steel Company or any of the subsidiaries of the United States Steel Corporation."

THE WITNESS: In the first place, I want to repeat one of my answers before, that I had no recollection of a pool price or agreed price on billets. Furthermore, the Carnegie Steel Company was negotiating with the Pittsburgh Steel Company for a tonnage of billets; the Republic quietly made a price much lower than had been made prior to that time by any one and took that tonnage. I think that answers your question.

By MR. DICKINSON:

Q. In a measure, yes. State whether or not, shortly after that the American Steel & Wire Company cut the price of wire products, especially barb wire.

A. What time was that?

Q. This contract that I referred you to was July 30, 1904, and the time now involved in this question is the period shortly after that contract came to the attention of your company.

A. I believe there was a general readjustment of prices of all commodities in the Fall of 1904.

Q. Without regard to that readjustment, state how it was initiated, whether by a cut in prices in wire products by the American Steel & Wire Company.

A. I could not say that that was the first cut, whether that was the initial cut.

Q. Did it make a cut about that time?

A. The American Steel & Wire did make a reduction in prices in the Fall of 1904.

Q. Were or not wire products one of the principal products of the Pittsburgh Steel Company?

A. Yes.

Q. Were you present at the discussions of the officials of the United States Steel Corporation when the question of making the Hill leases was under consideration?

A. On a number of occasions.

Q. Who were present at those discussions; what officials of the United States Steel Corporation?

A. On several occasions the question of making the lease was discussed before the Finance Committee.

Q. And who were present then?

A. Haven't you a record?

Q. Oh, yes, I have, but I thought maybe you could tell me.

A. I cannot recollect. The Finance Committee probably as a whole was present.

Q. Mr. Corey, state whether or not at those discussions of the Finance Committee at which you were present, one of the purposes discussed in making the lease was to take that body of ore out of the market and away from competitors.

MR. SEVERANCE: I object to that as incompetent, leading, and the proper question should be what was said by the gentlemen present at that meeting instead of suggesting to him that something was said by some unnamed person at the meeting.

THE WITNESS: I have no recollection of hearing that statement made at the Finance Committee.

By MR. DICKINON:

Q. Did you at any time shortly preceding the making of the Hill lease hear any of the officials of the United States Steel Corporation discuss that as one of the reasons for making the lease; and if so, state what official made such statement?

MR. SEVERANCE: I object to that as leading and not in any way binding upon the defendants or any of them, even if said statement was made, of which I have no knowledge, and as incompetent and immaterial.

THE WITNESS: I would not cite any individual as making that statement.

By Mr. Dickinson:

Q. Well, without calling the name of any individual, can you recall any such incident at which were present any of the officers or any of the members of the Finance Committee?

Mr. Severance: I object to that; that is doubly improper because we are not now asked even for a statement made by an unnamed official as we have been heretofore, but by somebody else. It certainly is incompetent, and immaterial, and leading, and the witness has already stated he could not recall any such statement.

The Witness: No, I cannot state that I have.

By Mr. Dickinson:

Q. You were at that time the president of the Corporation?

A. I was.

Q. Would that operation influence your action in the matter or not, taking that amount of ore property out of the field and away from competitors?

Mr. Severance: I make the same objection as leading, incompetent, irrelevant and immaterial.

The Witness: Not at all; I was always opposed to making the lease.

By Mr. Dickinson:

Q. Why were you opposed to making it?

A. On account of the price and conditions alone.

Q. Did you at that time need that property for the operation of the properties of the United States Steel Corporation?

A. No.

Q. You say on account of the price, was it too high or too low?

A. I would hardly object that it was too low.

Q. Then was it too high in your judgment?

A. Materially.

Q. How much too high?

A. At least double.

Q. Mr. Corey, I call your attention in the minutes of the Finance Committee of the United States Steel Corporation of March 17th, 1903, Government Exhibits printed Volume II, page 597, to the following passage:

"Mr. Frick, as Special Committee on Guaranteeing Ore

Tonnage over Mr. Hill's Railroads, reported that he believed a fair arrangement would be to guarantee 800,000 tons, the same tonnage as last year; and in case our shipments exceeded those of last year, to give the Hill roads their proportion of such excess—to be figured on the basis of last year's shipments.

"On motion and by the affirmative vote of all present, such suggestion was approved and Judge Gary was authorized to conclude the arrangement."

Was any such arrangement concluded?

A. Not to my knowledge at that time.

Q. Well, at other times had the United States Steel Corporation guaranteed to the Hill roads any specific amount of tonnage?

MR. SEVERANCE: You mean outside of the lease?

MR. DICKINSON: This was long before the lease.

MR. SEVERANCE: Yes, I want to know what the question relates to.

MR. DICKINSON: Yes, before the lease.

THE WITNESS: Not to my knowledge until the lease went into effect; but recollect I was not in New York at that period.

By MR. DICKINSON:

Q. I read from the minutes of the Finance Committee of the United States Corporation, February 20, 1906, page 605, Government Exhibits printed Volume II:

"The Chairman of the Board, for himself and Mr. Frick, acting as the Special Committee, appointed March 17th, 1903, reported that at various times negotiations had been pending between the Special Committee and the Hill interests for the Acquisition of the Hill Ores," and so forth.

Were those reports in writing or verbal?

A. I believe verbal.

MR. SEVERANCE: He says here he stated in general terms the substance of the arrangement; it must have been verbal.

THE WITNESS: I do not think they were in writing at all.

By MR. DICKINSON:

Q. I believe you stated, Mr. Corey, that prior to the organization of the United States Steel Corporation you were General Superintendent of the Homestead Steel Works?

A. Yes, sir.

Q. You were familiar with its works, were you, and plans for extensions at that period?

A. Yes, sir.

Q. Were you a member of the Board at that time, in 1899?

A. I do not think I was.

Q. Did you or not attend the meetings of the Board then?

A. You will have to read it out of the book. I do not recollect it.

Q. I will read from page 1252 Vol. III of the Government Exhibits as follows:

(Reading). "At a meeting of the Board of Managers of the Carnegie Steel Company, Limited, held at the general offices of the Association, Carnegie Building, Pittsburgh, Pennsylvania, at 12:30 P. M., Tuesday, June 6, 1899, there were present Messrs. Schwab, President, Peacock, Phipps, Morrison, Clemson, Gayley and Lovejoy, Secretary; also Messrs. George Lauder, W. H. Singer and W. E. Corey. Mr. Frick sailing for Europe today. Mr. Curry in New York."

Does that or not refresh your memory as to whether you were a director?

A. From the way that is written, I would judge I was not during that time.

Q. But you—

A. (interposing). I attended some of the meetings.

Q. You attended some meetings?

A. Yes.

Q. Did you attend the meetings where the questions of expansions and extension of works were discussed?

A. Frequently.

Q. State whether or not about the year 1899 it was the purpose of the Carnegie Steel Company to build pipe and other works.

MR. SEVERANCE: I object to that, as not the best evidence. The action of the Corporation can be shown by the action of the directors and not by oral testimony; and the witness certainly cannot be expected to give the purposes that may have been within the minds of the gentlemen composing the Board

of Directors or in the minds of the officials of the Corporation; and it appears that he himself was not, at that time, either an official or a director, but superintendent at one of the mills.

MR. COLTON: He said he attended the meetings, however.

By MR. DICKINSON:

Q. Now, if you can answer that question, Mr. Corey, please do so.

A. It was.

Q. Where were those to be built?

A. At Conneaut.

Q. What was the extent and character of the works contemplated?

MR. SEVERANCE: I desire to make the same objection to that, as Mr. Corey at that time, not being an official or director of the Carnegie Steel Company, could not know the purpose of that company; and the action of the company would necessarily have to be taken in a formal way if they were to be building mills and so forth. The question is incompetent and immaterial.

THE WITNESS: The erection of a large plant was under contemplation, but the details had not been worked out.

By MR. DICKINSON:

Q. To produce what?

A. Tubes and pipe.

Q. Up to that time had the Carnegie Company been making tubes and pipe?

A. No.

Q. That was a new departure, was it, in its manufacturing products?

A. It would have been.

Q. State whether or not those plans were being discussed shortly prior to the time that the Carnegie Company was taken over by the United States Steel Corporation.

A. No; I cannot admit that. My recollection is that it had been discussed for several years at least.

Q. And down to what period?

A. I would presume from 1898 to 1900 would be about the time.

Q. During the year 1900 were they under discussion and contemplated?

A. I could not state definitely. I am giving you about the date.

Q. Mr. Corey, did there ever come to your attention a call or notice sent by E. H. Gary of the Federal Steel Company, by C. M. Schwab of the Carnegie Steel Company and Joseph G. Butler, Jr., representing the Bessemer Furnace Association, which stated that at a formal meeting of the presidents of the leading steel companies it was thought advisable to call a meeting to go over the situation to see what could be done to improve it?

A. I have no recollection.

Q. Mr. Corey, I call your attention to a meeting of the Board of Managers of the Carnegie Steel Company, Limited, which is printed at page 1333 et sequitur of Volume III of the Government Exhibits, and I read therefrom the following:

"At a Meeting of the Board of Managers of the Carnegie Steel Company, Limited, held at the general offices of the Association, Carnegie Building, Pittsburgh, Pa. at 10.00 A. M. Monday, March 12th, 1900, there were present MM. SCHWAB (President), SINGER, PHIPPS, CLEMSON, MORRISON, GAYLEY and MORELAND (Secretary); also MR. W. E. COREY. (MR. LAUDER abroad; MR. PEACOCK in California).

"The minutes of the Board of Managers held March 5, 1900, were read and on motion approved.

* * *

"In the matter of the Bill in Equity filed by H. C. Frick against this Association and its members. The President submitted an answer prepared for this Association by its counsel, which was read by the Secretary and which is made a part of the minutes of this meeting, and after consideration thereof, it was

"Resolved, that the said answer as read be and is hereby approved and adopted, as the answer of this Association, and

the President and Secretary are authorized and directed to execute the same for this Association and affix its seal thereto.

"On motion, (MM. Phipps and Clemson), this resolution was unanimously adopted, the vote being: Schwab, aye; Singer, aye; Phipps, aye; Clemson, aye; Morrison, aye; Gayley, aye; Moreland, aye; also Mr. W. E. Corey, aye."

Do you remember the fact of your adopting that answer, Mr. Corey?

A. I was acting director at that time.

Q. Do you recall that circumstance?

A. I cannot recall that circumstance. We did nothing but sign papers.

Q. This is taken from the minutes of the Association of the Carnegie Company, already introduced in evidence.

A. I have no doubt it is absolutely so, but I have no recollection as to what the papers were, now.

Q. You know there was such a suit?

A. Certainly.

Q. And that there was an answer?

A. Yes.

Q. Did you see the answer before it was filed, or know the contents of it?

A. In a general way, yes.

Q. This minute says that the said answer, "as read, be, and is hereby, approved."

A. I have no doubt I heard it, but it was too legal for me.

Q. Mr. Corey, state whether it was your belief, when you voted for that, that the statements therein were true.

MR. SEVERANCE: He says it was too legal for him. You did not hear his last answer, Judge. He said he probably heard it read, but it was too legal for him.

(By request, the stenographer repeated the preceding question and answer as follows:)

"Q. This minute says that the said answer, 'as read, be, and is hereby approved.'

"A. I have no doubt I heard it, but it was too legal for me."

"Q. Mr. Corey, state whether it was your belief, when you voted for that, that the statements therein were true."

By MR. DICKINSON:

Q. There were facts stated in there, were there not?

A. I have really no recollection, now, as to what the bill contained, or what the answer contained.

Q. If there were facts stated there, you could understand them, could you not?

A. Assuredly.

Q. And, if it was read, and you voted for it—

MR. SEVERANCE: One moment. I object, if counsel will allow me, to any further cross-examination of the Government's witness. The witness has been very frank in his testimony.

MR. DICKINSON: I am not objecting that he has not been frank.

MR. SEVERANCE: Let me finish my objection. I cannot conceive of any reason why counsel finds it necessary to cross-examine his witness all the time. I object to any further cross-examination along that line. He has said very frankly, that he has no recollection of the contents of this answer. You have the answer in the record, and it is a part of the minutes, and binding on the people who joined in it, so far as you can make it binding.

MR. DICKINSON: Is that all?

MR. SEVERANCE: Yes; and that is enough, for any court.

(By request, the stenographer repeated the last question, as follows:)

"Q. And, if it was read, and you voted for it—"

MR. DICKINSON: You see you entered that objection before I had finished my question.

MR. COLTON: And your efforts are all thrown away.

MR. DICKINSON: I will ask another question, and leave the unfinished one that has been objected to.

MR. SEVERANCE: Then cut out the unfinished question.

MR. DICKINSON: No; I will leave it just as it is, to show how relevant your objections are.

MR. SEVERANCE: I shall have to make the objection all over again, then.

By Mr. Dickinson:

Q. I will read to you from this answer—

A. (Interposing) Well, I must decline to answer the question unless I hear the whole answer to this bill of complaint. Have you got it there?

Q. Yes; I have got it here.

A. Either let me read it, or read it to me; because otherwise I will not know what I am discussing. I am a little better lawyer now than I was at that time.

Q. I will say this, by way of explanation, that I shall not put to you any wholesale questions but simply shall ask you as to certain features which I think you probably can answer.

A. All right, go ahead.

Q. Then if you want me to read the whole thing, I will do it.

A. No; I will not stand on that. I waive my objection.

Q. I will read you this (Reading):

"It is not true that, on December 31,—"

Mr. Severance: From what page are you reading, Judge?

Mr. Dickinson: I am reading from page 1334 (reading):

"It is not true that on December 31, 1899, the said Association had assets or property, either real or personal or tangible, in any form, which the said Association in its legal capacity could transfer, which were worth $250,000,000; nor did the defendant, Andrew Carnegie, ever assert that said assets were in excess of that sum."

I shall not ask you about what Mr. Carnegie asserted.

Mr. Severance: You have asked him that.

Mr. Dickinson: I am not going to ask a question about it.

Mr. Severance: Why do you not—

Mr. Dickinson: Wait and hear what I shall say.

Mr. Severance: I have heard what you said, Judge, but you stopped reading with that statement that Andrew Carnegie had never made that assertion, and the next sentence after that shows what he did say. In fairness, you should put that in, if you are going to ask about it at all. That next sentence goes to explain what Mr. Carnegie did say.

MR. DICKINSON: I am not going to ask him about what Mr. Carnegie said.

MR. SEVERANCE: I think it is only fair to the witness, if he he is going to be asked a question ——

MR. DICKINSON (interposing): I am not going to ask him whether Mr. Carnegie ever asserted——

MR. SEVERANCE: Here is the point. You are going to ask as to that statement about the value of the property. You have left out the statement of Mr. Carnegie immediately following, that the property, based on its earning capacity, is worth a great deal more.

MR. DICKINSON: I would rather read it than argue the question, and so I will satisfy you by reading it.

MR. SEVERANCE: Yes; I think you had better, in fairness to the witness.

MR. DICKINSON: I object to any statement about any unfairness to the witness. I do not think I have been unfair to him, and I do not think he thinks so.

I continue to read:

"The said Andrew Carnegie has repeatedly expressed the opinion with reference to the earning capacity of said company that the personnel of its organization was worth more than all the property of the company. It is true that the said Andrew Carnegie has expressed and still holds sanguine views as to the future of said company, but any such views are based upon the maintenance of the organization of the said company in its present condition of effieiency and harmony.

"The facts which the plaintiff has distorted in order to give color to the averments contained in the ninth paragraph of the bill, are these:

"For some time past the plaintiff has been interesting himself in schemes to transfer the property of this Association at first to a proposed combination of steel companies, and later to a corporation whose securities might be floated on the market and disposed of to the public upon the basis of a capitalization of the earning power of the plant owned by the Association in combination with the skill, experience, and ability of its members."

What I am going to ask you——

MR. SEVERANCE: Read the next sentence, will you not, Judge. That covers it.

By MR. DICKINSON:

Q. What I want to ask you is this:—

MR. SEVERANCE: Would you mind, just out of the kindness of your heart, Judge, reading the next sentence only.

MR. DICKINSON: That is such a modest request, that I will do it very gladly (Reading):

"We have no purpose or intent to depreciate the earning power of our property when managed by its present organized membership."

Is that all?

MR. SEVERANCE: Yes. I am very much obliged, sir.

By MR. DICKINSON:

Q. I will ask you, Mr. Corey, whether or not the statement "It is not true that on December 31, 1899, the said Association had assets or property, either real or personal, or tangible, in any form, which the said Association in its legal capacity could transfer, which were worth $250,000,000" was true or not.

MR. SEVERANCE: I object to that as incompetent. It does not appear that the witness has ever had the assets inventoried or valued, or qualified himself to state the value of the property, or that he was familiar with the entire properties of the parties.

THE WITNESS: I take exception to that, Mr. Severance. I was entirely familiar with the company and the value of the property, and I will say this, now, once and for all; that there was no value too high or too great that could ever have been set upon the Carnegie Steel Company.

MR. SEVERANCE: I merely said that he had not shown that you had had an inventory made or were familiar with it. I did not dispute your knowledge, except that he had not shown it.

By Mr. Dickinson:

Q. Was that your judgment at that time?

A. That was my judgment at all times.

Q. When you voted to adopt this answer, with that statement in it?

A. That was a settlement of a case, and in one statement in that reply it said: "could not be transferable". It is questionable whether that great organization could be transferrable to any place or at all times. That is what I considered the most valuable asset of the Carnegie Steel Company—its great organization.

Q. You mean the personnel?

A. The personnel.

Mr. Severance: That is what the answer says.

By Mr. Dickinson:

Q. Leaving out the personnel, and coming down to the actual value of the properties themselves, I will ask you whether this statement that, "It is not true that on December 31, 1899, the said Association had assets or property, either real or personal or tangible, in any form, which the said Association in its legal capacity could transfer, which were worth $250,000,000," was true or not.

Mr. Severance: I make the same objection.

The Witness: I say you could not consider the valuation of that property without you considered the personnel and the esprit de corps of that Association.

By Mr. Dickinson:

Q. And in your estimate you include that,—the personnel?

A. I do.

Q. You do not make any estimate of the properties dissociated from that?

A. No; that would be very difficult. I could not do that.

Q. Are you in a position to give any correct opinion or approximately correct opinion of the values of the properties at that time dissociated from the personnel of the management?

A. No; I doubt if I could.

Q. The following occurs in this answer at page 1336:

"These books show that the net value on the 31st day of December, 1899, of the assets of the Association was $75,610,-104.06. To a large extent this book value represents the actual cost of the properties represented in the balance sheets of the Association. From time to time during the plaintiff's membership in the Association he, and other members, were appointed a committee to re-value certain assets. In every instance of such re-valuation the plaintiff himself has been a member of such committee, and the values now entered and the properties included as having value may be taken as the plaintiff's own statement of their value to his fellow members, on which, during plaintiff's membership more than fifteen settlements have been made with retiring members or the estates of deceased members.

"In the year 1892, and in anticipation of the dividend of profits which was then declared, the assets of the Association were carefully re-valued and appraised by a committee consisting of H. C. Frick, H. M. Curry, and F. T. F. Lovejoy.

"Again, in the year 1899, at the suggestion of a committee consisting of H. C. Frick, Henry Phipps, Jr., and F. T. F. Lovejoy, certain changes were made in the "book value" of the assets of the Association; and the result thus reached was a just, fair and reasonable valuation of said assets, and was so accepted by the Association.

"Every month a balance sheet of the Association's assets and liabilities has been prepared, and a copy of the same furnished to the plaintiff, on which balance sheet the "book value" of the capital is clearly shown; and we aver that the valuation of the assets as shown on said books and balance sheets is a full, fair and accurate valuation of the same, and that there has not been omitted from such books and balance sheets any asset which should properly find a place thereon.

* * *

"As has been heretofore stated, the plaintiff has for some years past been desirous of transferring the property of this Association to a corporation upon a large capitalization and to float its securities with the general public. The said Carnegie had never been inclined personally to favor said scheme."

Now, state, Mr. Corey, whether or not the statements there made as to valuation of properties, without any reference to a question of personnel, were correct or not.

MR. SEVERANCE: The witness has already stated that he would not care to give an estimate of the value of the physical property disassociated from the personnel, and I object to counsel cross examining his own witness further on that subject.

THE WITNESS: I stand on my answer.

By MR. DICKINSON:

Q. What did you say to this: "These books show that the net value on the 31st day of November, 1899, of the assets of the Association was $75,610,104.06. To a large extent this book value represents the actual cost of the properties represented in the balance sheets of the Association." Was that true or not?

MR. SEVERANCE: I object to this further cross examination of the witness upon the subject, as he has twice answered a similar question.

THE WITNESS: That answer was an answer to a bill of complaint made by Mr. Frick for a dissolution of the company or a settlement of his interest. Well, the answer was made as low as it possibly could be made, in my opinion.

By MR. DICKINSON:

Q. Within the bounds of truth?

MR. SEVERANCE: I object to this cross examination. It is hardly fair to ask if he subscribed something that is not true, your own witness; he has been perfectly frank in his expressions all through.

By MR. DICKINSON:

Q. I just merely wanted to know what you mean, whether it came within the bounds of truth or without the bounds of truth.

A. It certainly would not be made without regard to truth, but all I will say is that my recollection of it was that it was made as low as possible.

Q. Consistent with truth?

MR. SEVERANCE: I make the same objection.

THE WITNESS: Certainly, if you want to put that in.

MR. DICKINSON: We reserve the right to recall Mr. Corey to examine in regard to another volume of the Carnegie Association, if it is produced.

(Whereupon at 4.00 P. M. an adjournment was taken until tomorrow, at 10:30 A. M.)

THIRTY-NINTH DAY

REFERENCE ROOM, ST. PAUL BUILDING,
220 Broadway, New York.

FRIDAY, JANUARY 24, 1913.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the Defendant, Mr. Severance, Mr. Bolling and Mr. Reed.

Present on behalf of the Great Northern Iron Ore interests, Frederick R. Kellogg and Chester W. Cuthell.

MR. KELLOGG: Mr. Examiner, inasmuch as I was not present yesterday, I desire to ask that the parties whom I represent be given the benefit of certain objections that were made by counsel for the other defendants in this case.

MR. DICKINSON: Suppose we make it broader than that—that you may avail yourself of any objections that have been made.

MR. KELLOGG: Thank you very much. I appreciate that very much. They are but very few.

MR. DICKINSON: It is agreed by counsel for the Government that counsel—

MR. KELLOGG: Representing the Great Northern Trustees, 18 Ore Companies, and Mr. Gruber.

MR. DICKINSON (Continuing): May avail themselves of any objection hitherto entered by any of the Counsel in this case to any of the testimony, the same as if they had at the time joined in the exception.

MR. KELLOGG: I thank you. So far as it relates to our interests.

MR. COLTON: So far as it relates to the ore interests.

MR. KELLOGG: So far as it relates to matters which are material to the interests of those defendants whom we represent.

MR. DICKINSON: Very well. Let that be understood.

WILLIAM E. COREY,

a witness produced on behalf of the United States, having been previously sworn, was recalled and testified as follows:

CROSS EXAMINATION,

By Mr. Severance:

Q. I think you testified that previous to becoming president of the Carnegie Steel Company you were the head of the works at one of the plants out there?

A. Yes.

Q. Which plant was that?

A. The Homestead Steel Works.

Q. And how long had you been at the head of the Homestead Steel Works?

A. About five years.

Q. Previous to that, immediately previous to that, what was your position with the company?

A. Superintendent of a department at the same works.

Q. For how many years had you occupied that place?

A. About five years.

Q. And previous to that what was your position?

A. I was in the chemical laboratory of the Edgar Thomson Steel Works.

Q. I don't want to go into all the details of your life previous to that time, but in general it is a correct statement, is it not, to say that up to 1901 when you became president of the Carnegie Steel Company your experience had been entirely in the manufacturing department?

A. That is true.

Q. You had had nothing to do with the selling of the product?

A. No.

Q. Who was the head of the Sales Department of the Carnegie Steel Company, if you remember?

Mr. Dickinson: Will you designate the time?

Mr. Severance: Well, up to 1901, yes.

The Witness: Alexander R. Peacock was the head of the

selling department for a certain period, and George H. Wightman was the next.

By Mr. Severance:

Q. Is Mr. Wightman still alive?

A. Yes.

Q. Where does he live?

A. Boston.

Q. And Mr. Peacock lives in Pittsburgh, does he not?

A. Yes, sir.

Q. Now, immediately upon the organization of the Steel Corporation, Mr. Schwab, who had been president of the Carnegie Steel Company, was made president of the United States Steel Corporation?

A. He was.

Q. And you succeeded him as president of the Carnegie Steel Company?

A. Yes, sir.

Q. And how long did you remain as such president of the Carnegie Steel Company?

A. From April, 1901, until the fall of 1903.

Q. Now, during that time you devoted yourself very largely, did you not, to endeavoring to perfect the works, increasing their efficiency and enlarging their output?

A. Yes, sir.

Q. During your presidency?

A. Yes, sir.

Q. And that was a thing that had been your life work and you were more familiar with that and devoted yourself chiefly to that branch of the business?

A. Exactly.

Q. Is it not also true that after you became President of the United States Steel Corporation, your great interest in the Corporation consisted in that line of work,—increasing the efficiency of the mills, and cheapness of production?

A. I would not say entirely. That was one of my principal objects, Mr. Severance, but I gave considerable attention to other lines as well.

Q. Yes, I understand, but in view of the fact that you had always been interested in that branch and were more

familiar with that, it is a fact that you gave more attention to it than to other parts of the business, is it not?

A. I would say that is true, yes.

Q. You were asked yesterday or the day before yesterday with reference to a pool that you stated existed between the different manufacturing companies relative to the sale of steel rails. In that question I am not calling your attention to what you said with reference to some international arrangement, but domestic sales.

A. Yes.

Q. When did you first become cognizant of that arrangement between the manufacturers, whatever it may have been?

A. That is rather a difficult question to answer, Mr. Severance. What are you leading up to?

Q. Well, I am going to examine you with reference to that pool that you testified about. The question that you answered I will read to you from page 5499 of the record:

"Q. State whether or not after you came to be an officer of the Carnegie Company you acquired any knowledge of any arrangement existing at that time between the Carnegie Steel Company and any other company in regard to the price of rails or the proportional output of rails or selling rails in any territory or desisting from selling in any territory?

"A. I did."

I am asking you when it was that you first heard of such an arrangement of that character. You were asked whether or not when you came to be an officer you found that existed. Was that the time you first heard of it?

A. No doubt I had heard of it before, but I was not—no doubt I had heard of it before that time, Mr. Severance, but I did not know particularly of it until I became President of the Carnegie Steel Company.

Q. In April?

A. In April, 1901.

Q. 1901?

A. Yes, sir.

Q. Now, after you became President of the Carnegie Steel Company, whatever that arrangement was, you found it is in existence?

A. Yes.

Q. It was not made after the organization of the Corporation?

A. Not at all.

Q. It was a hangover?

A. That is correct.

Q. There was no rigid agreement so far as you know covering the operations of that Association, was there?

A. I never saw one.

Q. Under the operations of that agreement, there was no limitation, was there, placed upon the number or tonnage of rails that could be sold by any of the parties, although they might have to pay a penalty or a certain amount per ton for excess over the percentage, but there was no limit on the number they could seek to sell and sell, was there?

A. No.

Q. And, as a matter of fact, is it not true that the sales agents of the different manufacturers were actively in the market seeking business as the result of which from time to time certain manufacturers over-sold the percentage alloted to them in this pool?

A. At times, they did.

Q. Was there at that time, as a rule, a sale of other railway supplies that went along with rails?

A. Yes.

Q. And there was no limitation or pool covering those supplies, was there?

A. Not to my knowledge.

Q. And each manufacturer or the selling agent of each manufacturer was active in securing the sale of all such supplies as he could get?

A. Yes.

Q. In open competition?

A. Yes.

Q. It was the desire of the Carnegie Steel Company, was it not, even during the existence of that pool to maintain its relations with the different railroads, so that in case of the dissolution of the pool it would have that relationship established, I mean the relation of buyer and seller?

A. Yes, it was the endeavor to maintain friendly relations with the railroads.

Q. Now, in the sale of steel rails, Mr. Corey, is not the proximity of the railroad to the mill a matter of considerable consequence?

A. I do not understand.

Q. What I mean is this: We will say, for instance, the Illinois Steel Company's plant, is located in Chicago; the Santa Fe, the Northwestern, the Milwaukee & St. Paul, Alton, and various other roads running from Chicago to the west, are natural customers, are they not, of the steel mills located there as against the steel mills located in Pittsburgh?

A. Certainly.

Q. And it is an advantage to that mill to be located in proximity to those railroads?

A. Certainly.

Q. Now, on the other hand, that advantage would operate the other way in favor of the Pittsburgh district as to railroads located in the east, would it not, as against the Illinois?

A. It would, but there were too many rail mills located in the east, so that the eastern mills had to sell west.

Q. I understand that. But the Illinois could not get into that territory to any extent as against the Carnegie Company or the Lackawanna or the Cambria or the Pennsylvania, could they?

A. They certainly could not.

Q. The great railroad systems in the east, such as the Pennsylvania, the New York Central lines, the Erie, Lehigh Valley, Baltimore & Ohio, all of those lines naturally purchased their supplies for the eastern parts of their system, in the Pittsburgh district, or the eastern mills along the coast.

A. From the eastern mills. We considered all the mills east of Pittsburgh as eastern mills.

Q. That is what I meant to cover by my question. About when, Mr. Corey, was this rail pool broken up?

A. I believe I testified that it was in 1904 or 1905.

Q. I thought you so stated, but I wanted to make sure. At page 5505 of the record you were asked if there was not

a discussion between rail manufacturers in the early part of 1907 and the early part of 1908, as to whether the price of rails should be reduced, and you were asked to state whether or not they had reached an agreement to reduce the price on rails from $28.00, and in answer to that you said:

"A. The rail manufacturers probably had a conference, did have a conference, I have no doubt, but there was no understanding or agreement arrived at to either reduce the price of rails or maintain the price of rails."

That was your answer?

A. Yes.

Q. Now, it is a fact from the time that pool was broken up in 1904 or 1905, as you have stated, while the different rail makers may have come together and had a conference or conferences with the executive officers of the railroads there was never any agreement entered into between the rail makers from 1904 or 1905 on, either to advance, reduce or maintain prices; is not that true?

A. That is true.

Q. Is it not a fact that in some of those conferences after the pool was broken up, some of the outside manufacturers—by that I mean rail makers other than those belonging to the United States Steel Corporation,—wanted to raise the price of steel rails and the Corporation declined to raise its price; do you not know that?

A. Yes, I have heard suggestions from some of the other rail manufacturers to that effect.

MR. DICKINSON: Does that cover your full question?

MR. SEVERANCE: What?

MR. DICKINSON: Does that answer your question fully?

MR. SEVERANCE: I think I will ask one more question.

By MR. SEVERANCE:

Q. Were you present at any conference at which the suggestion was made by the other rail manufacturers that the price ought to be raised?

A. I am not prepared to state definitely that I was, but I recollect that it may not have been at a conference, it may have only been between individuals, but on several occasions other rail manufacturers have said to me that they thought

the price of rails was too low and should be advanced; but I would not state that it was at a conference.

Q. But neither you nor any of the other executive officers of the Steel Corporation were ever willing to raise your price above twenty-eight dollars during that period?

A. No.

Q. It is a fact, is it not, Mr. Corey, that at various times and even at the present time the price of steel rails in foreign countries has been and is now higher than in the United States?

A. Yes.

Q. I will ask you if you do not know it is a fact that at the present time steel rails in England are selling at $28.50 a ton; in Germany at $28.75 a ton; and in Belgium at $28.13 a ton; in France at $32.81 a ton; in Russia at $35.46 a ton, and in Italy at $36.89 a ton, and in Canada at $31. to $32. a ton, as against $28. in this country?

MR. DICKINSON: Just a moment. This is excepted to because the prices referred to relate to a period subsequent to the filing of the petition in this cause, and therefore are irrelevant and incompetent.

By MR. SEVERANCE:

Q. Will you answer the question, Mr. Corey?

A. I am not familiar with the prices read by Mr. Severance, but I do know that for several years prices have been higher in France, Germany, Austria, Italy and Russia. I am not familiar with— I could not state positively regarding England and Belgium.

Q. There are steel makers in all those countries that you mention, are there not?

A. Yes.

Q. Mr. Corey, you were interrogated day before yesterday with reference to some agreement between rail makers in this country and foreign countries, the examination being founded upon a statement in the minutes of the Finance Committee of the United States Steel Corporation which was read to you at page 5506, under date of November 1, 1904, as follows:—

"The President brought up the question of making some arrangement with foreign producers in regard to price of rails to be sold in neutral markets. After a full discussion

the question was referred to Messrs. Gary and Corey with power."

You were President at that time?

A. Yes.

Q. You were the gentleman that brought it up?

A. I was.

Q. Now, you were asked about that matter and stated it was—I am quoting from your testimony at page 5507— "It was a general custom not to invade the territory of a producing country."

That was a fact, was it not?

A. Yes, sir.

Q. So far as you know that had been the custom for a long time in the absence of any agreement, but for business reasons, had it not?

A. I could not say for what length of period it had been, because some years previous to that we invaded England.

Q. That was how long ago? That was before the Corporation was formed?

A. No, afterwards.

Q. Do you remember what year?

A. I do not; it was early in the history of the Corporation.

Q. That was sporadic and unusual, was it not?

A. Yes.

Q. As a business proposition, it would not ordinarily pay the manufacturer in a distant country to ship to railroads located adjacent to mills in another country in competition with them, would it?

A. Certainly not.

Q. And that is what you had in mind, was it not, in making that answer, that it was a general custom not to invade the territory of the producing country?

A. That was the general custom at that time.

Q. You were also asked, Mr. Corey, and I quote this from page 5519:

"Q. You have stated, Mr. Corey, that under this, the United States Steel Corporation was not to sell and did not sell in countries abroad where steel rails were being manufactured. State whether or not, under this arrangement, the

manufacturers of these other countries refrained from selling in the United States."

And your answer was:

"A. That was the understanding."

A. That is a mistake; because my intention was to say that that was my understanding.

Q. You, personally, did not participate in making any such arrangement with these foreigners, did you?

A. I did not.

Q. And you so stated in your testimony?

A. Yes.

Q. That was done by Mr. Farrell, I think you said?

A. I did.

Q. And you know nothing of what the arrangement was with the foreigners except as it was stated to you by him.

A. Except what he told me.

Q. Is not this all that you meant to state by your answer, Mr. Corey: That, as you had said before, in the question and answer I read to you, it was not the custom to invade the territory of a manufacturer or producer—I have forgotten which word you used; that, under that custom, you did not expect that the foreigners would come into this country, because this was a producing country, and not a neutral country.

A. Yes; it was my understanding that they would not, because it was not common sense to do so.

Q. That was all you meant by that answer, was it not?

A. Yes.

Q. That is what I thought.

As a matter of fact, however, the foreigners did, at times, ship rails into this country, did they not, subsequent to this date?

To refresh your recollection, Mr. Corey: Do you remember that, at one time, after this, when Mr. Farrell was in Europe, you telegraphed—you being president of the corporation at the time—to him, either through the London office of the company or direct, to find out the price at Antwerp the Belgian mills received for a large consignment of rails, perhaps 50,000 tons, that were sold to the Harriman Lines for consumption on the Pacific Coast?

MR. DICKINSON: This is objected to, on the ground that it is secondary evidence. The telegram itself is the proper evidence, and should be produced, or its loss accounted for before the proof of its contents can be shown by the witness here.

By MR. SEVERANCE:

Q. You can answer the question, now, Mr. Corey.

A. Why do we not produce the telegram?

Q. I am asking you the question as to whether you did not send such a telegram?

A. I cabled Mr. Farrell asking the question as outlined by Mr. Severance. I am not prepared to state whether it was before or after the period that is now under discussion. I am not certain. I could not say definitely.

Q. You would not state that it was not after that period, would you?

A. I would not, no. I have no recollection as to whether it was before or after. I recall, particularly, the cable, because I was much exercised on account of a large tonnage of rails coming in on the western coast.

MR. DICKINSON: Counsel for the Government calls upon counsel for the defendants to produce the telegram, if they have it in their possession, and other correspondence on that subject.

MR. SEVERANCE: We shall be glad to find it if we can. We will look for it. We have to do the best we can on short notice. We did not know anything about this testimony until it was given. I shall try to find it.

MR. DICKINSON: It appears that somebody must have found it since that testimony was given, or the question could not have been asked.

MR. SEVERANCE: Mr. Farrell remembered it. I have had a talk with Mr. Farrell since yesterday, and he remembered it.

By MR. SEVERANCE:

Q. It is a fact, is it not, that, in addition to the handicap American manufacturers would be under in shipping to producing countries, there is a heavy tariff duty in most Euro-

pean countries which would have to be paid in order to get the rails into the country?

MR. DICKINSON: That is objected to on the ground that the question is addressed to the existing conditions, and not such conditions as existed at any time prior to the bringing of this suit.

MR. SEVERANCE: I will change the question to meet that objection.

By MR. SEVERANCE:

Q. Is it not a fact that, from the time of the organization of the Steel Corporation down to the filing of the bill in this case in October, 1911, there were heavy tariff duties on steel rails in most of the countries in Europe, which constituted an additional handicap to American manufacturers endeavoring to sell rails in those markets? I will exclude England from that question; not in England, but in the other countries of the Continent?

A. I knew of there being a high tariff in France, Germany, and Austria. I have no recollection of the tariffs in the other countries.

Q. I refresh your recollection, Mr. Corey, by asking if you did not know that the tariff on steel rails into Russia is, and was at that time, $28.67 a ton, or 67 cents more than the price at which rails are sold in this country. Do you recall that?

MR. DICKINSON: This is objected to on the ground that it is not a proper way to refresh the recollection of the witness, and it has been shown that no rails were manufactured in Russia.

MR. SEVERANCE: I beg your pardon. It has not been shown.

MR. DICKINSON: I think so.

MR. REED: The opposite has been shown.

By MR. SEVERANCE:

Q. I will ask that question, now. Are there any rail mills in Russia?

MR. DICKINSON: Or were there?

By Mr. Severance:

Q. Were there any rail mills in Russia previous to October, 1911?

A. Yes.

Q. Now I renew the question.

A. No; I have no recollection.

Q. You do not remember?

A. I do not remember any such exorbitant tariff in any country.

Q. There was, likewise, a tariff in this country, was there not, that was imposed upon importations of foreign rails here?

A. Yes.

Q. Do you remember what that was at that time?

A. $7.94.

Q. $7.84, was it not? Was it $7.94 or $7.84?

A. I could not say. That is as close as I can go—$7.94, or $7.84.

Q. A matter of 10 cents is not very important.

There was a duty of the same amount, was there not, on rails shipped into Canada, $7.84—the Canadian duty against this country?

A. There was a duty. I am not prepared to state what the amount of the duty was.

Q. You stated, in answer to counsel for the Government, either yesterday or the day before yesterday, that the colonies of England, such as Canada and Australia, had preferential duties in favor of England as against other countries?

A. Yes.

Q. So that that gave the English manufacturer an advantage?

A. Yes.

Q. Not free trade into Canada and Australia, but an advantage over the United States in the way of duty paid?

A. They had a countervailing tariff.

Q. Yes. Do you recall what percentage that tariff was less than the tariff that other countries had to pay?

A. I do not.

Q. But it was a substantial advantage, was it not?

A. That was my recollection.

Q. In spite of that, the United States Steel Corporation, during the whole of its existence, sold large quantities of rails for Canadian consumption, did it not?

A. Both to Canada and Australia.

Q. Both to Canada and Australia?

A. Yes.

Q. The corporation had no mills in Canada, had it?

A. No.

Q. Every dollar received for rails sent to Canada came back here to the United States, did it not?

A. Yes.

Q. The manufacture of rails which were exported gave employment to labor and capital in the United States?

A. Certainly.

Q. And that was the same with the exports to Australia?

A. It was the same with the exports to any point.

Q. Is it not a fact, Mr. Corey, that from the time of the organization of the United States Steel Products Company, which was, I think, about contemporaneous with your coming on here as president of the Steel Corporation, strong efforts have been made continuously, in good times of the year or in bad times of the year, to maintain and build up a large foreign business?

A. We had a well defined policy to maintain at all times a large export business.

Q. Can you tell what the tonnage of the export business was as compared with the balance of the tonnage of the Corporation at the time you resigned as president?

A. Between 18 and 20 per cent.

Q. And that tonnage was all manufactured in this country?

A. Certainly.

Q. You had no mills outside of the United States?

A. No.

Q. Was that of a diversified nature?

A. Yes.

Q. In what countries in the world did you maintain agencies for the sale of steel rails or other products?

MR. DICKINSON: At what period, now?

By Mr. Severance:

Q. Previous to the time he retired as president.

A. I could not say.

Q. Practically all over the world, did you not?

A. I could not state that we maintained agencies, but I know that in the years 1909 and 1910, we exported to 47 different countries; that is my recollection; from Iceland to Tasmania.

Mr. Dickinson: Let me ask if the witness understood that question to refer to steel rails specifically?

The Witness: I did not understand the question to mean specifically steel rails. I rather inferred that the question was addressed to other products and rails. Is that correct, Mr. Severance?

Mr. Severance: That is what I mean.

Mr. Dickinson: Did you understand that it meant that you had agencies for rails in all countries?

The Witness: No. I said that I did not know what countries we had agencies in to sell any of the products. I do not recollect.

Mr. Dickinson: The only question is, I want to know whether you meant to make your answer apply to rails in all countries, as broadly as you did to other products?

The Witness: No.

Mr. Severance: I did not intend to so ask him.

Mr. Dickinson: I did not think so. My only object is to save me trouble in bringing it out later. That is all.

Mr. Severance: That is all right.

By Mr. Severance:

Q. That business of exports was, during all the time from the organization of the United States Steel Products Company down to the time you resigned as president of the Corporation, under the charge of Mr. Farrell, was it not?

A. Yes.

Q. He was the president of the Steel Products Company?

A. Yes.

Q. And he is the man who knows about the agencies, rather than yourself?

A. Yes.

Q. Did you learn, during the time that you were fighting for this export business, that producers in foreign countries were in the habit of having among themselves combinations and kartels?

A. It seemed to be rather prevalent.

Q. In European countries?

A. In European countries.

MR. DICKINSON: That is objected to as incompetent and irrelevant.

By MR. SEVERANCE:

Q. And you went into the foreign field to fight for American business in these 47 countries, of which you have spoken, against the competition of producers who were engaged in that sort of warfare, did you not?

A. Will you please state that again?

Q. I will withdraw it, and restate it. I do not wonder that you did not understand it.

When you went abroad to fight for business, you had to take cognizance of those conditions that existed, in regard to which you have just testified, did you not?

A. Yes.

Q. And your foreign agents had to make such prices in what you call neutral territory, or in any other territory, for that matter, as might be necessary to meet the prices quoted by these foreign manufacturers?

A. Certainly.

Q. You testified yesterday that you thought uniformly—I am going to ask you a little further about that—but that you thought uniformly the prices received at the mills for goods for export were less than the prices received for domestic consumption?

A. Yes.

Q. As a matter of fact, in going into the foreign field to establish and maintain yourselves, you had to meet the prices that were prevalent in those fields, and you obtained the best prices you could get? Is that not true?

A. Certainly.

Q. Do you not know it to be a fact, Mr. Corey, that towards the end of the time that you were president of the Cor-

poration, the Products Company had become so well established and had worked up such a line of customers, and trade conditions in the world were such that, at times as high prices were netted to the mills on foreign business as on domestic, and on some occasions even higher on certain contracts?

A. Yes.

MR. DICKINSON: This is excepted to, on the ground of not specifying what the contracts were.

By MR. SEVERANCE:

Q. I will ask you, Mr. Corey, whether you recall the fact that during the last year you were president of the Steel Corporation, namely, the year 1910, the exports of steel rails by the Corporation to Australia amounted to 86,884.8 tons?

A. I do not recollect the figures.

Q. You remember you had a very large tonnage, however, do you not?

A. Yes.

Q. To Australia?

A. Exactly.

Q. In spite of this duty which was to the advantage of England?

A. Yes.

Q. You also exported steel rails to South Africa, another English colony, did you not, to some extent?

A. Yes.

Q. And to New Zealand, at times?

A. Yes.

Q. Do you recall that in June, 1908, the Carnegie Steel Company sold 6,000 tons of steel rails to the New South Wales Government?

A. I do not recall that sale.

Q. You were interrogated, Mr. Corey, relative to certain competition between the Tennessee Coal, Iron & Railroad Company and the mills of the subsidiaries of the United States Steel Corporation previous to the acquisition of the Tennessee Company by the Corporation, and you stated, in answering counsel for the Government, that the Tennessee Compay was a competitor in rails?

A. Yes.

Q. Outside of steel rails, would you state whether the Tennessee Company was a competitor of the Steel Corporation to any appreciable extent?

A. We did not consider them so.

Q. Their output was how much in proportion to that of the Corporation?

A. Their output in what?

Q. Outside of rails?

A. It was infinitesimal. We did not consider them.

Q. You were asked whether you made an investigation of these properties of the Tennessee Coal, Iron & Railroad Company previous to the merger, and you stated you had no knowledge of such investigation—when I say you, I mean the Corporation. Did you, yourself, Mr. Corey, go down to Birmingham and look over the property after the purchase was made?

A. I did.

Q. Did you arrive at any conclusions which you reported as to the condition of the plants and what would be necessary to put them in proper condition?

MR. DICKINSON: That is objected to as irrelevant and incompetent, and on the ground, also, that it is secondary. The report itself would be the best evidence.

MR. SEVERANCE: I have not asked him about a written report.

MR. DICKINSON: You had probably better ask him whether it is in writing or not.

THE WITNESS: Shortly after the purchase of the Tennessee Coal & Iron Company, I went to Birmingham with a number of the presidents of the subsidiary companies of the Steel Corporation, and made a rather thorough examination of the properties of that company. The summary of the report was—

MR. DICKINSON: Excuse me just a moment. I would like to ask whether that was in writing.

MR. SEVERANCE: All right.

By MR. DICKINSON:

Q. Was it in writing?

The report that I made to the Finance Committee was not in writing; but the digest of our examinations was in writing.

MR. DICKINSON: I object to the witness stating the contents of the digest of the examination, on the ground that it is secondary evidence, and that the best evidence is the digest itself; and we call for the production of that before the witness can be examined as to its contents.

MR. SEVERANCE: I do not ask for the contents of the digest.

By MR. SEVERANCE:

Q. I want to ask you what you found, and what you concluded. You were asked, yesterday, by Judge Dickinson, on direct examination, as to the conditions of the mills of the Tennessee Company. Now I am asking what you found as to the condition of those mills, and what you considered it would be necessary to spend on those mills to put them in proper condition to successfully operate the company. I am not asking you for the contents of any writing whatever.

A. Shall I proceed?

MR. DICKINSON: Surely

THE WITNESS: I made a verbal report to the Finance Committee immediately on my return home, that there would be required an expenditure of $5,000,000 a year for five years, or a total expenditure of $25,000,000 to rebuild certain plants of the Tennessee Coal & Iron Company, to build new plants to diversify the product of said company; and, at the expiration of that time, and with the expenditure of $25,000,000, the Tennessee Coal & Iron Company could be made a dividend payer for the Corporation.

By MR. SEVERANCE:

Q. What condition did you find the mills to be in at that time?

A. The new rail mill and the open hearth plant were in fair condition. The bar mills and small plate mills were obsolete. The blast furnaces were—it is rather difficult to answer off-hand. That was all written out—

Q. I am merely asking for your best recollection.

MR. DICKINSON: Let him finish his answer.

MR. SEVERANCE: I intend to let him finish.

MR. COLTON: He started to say that it was written out.

MR. SEVERANCE: I was adopting your course, Judge, of breaking into the middle of an answer.

MR. DICKINSON: You broke in before he had finished.

MR. SEVERANCE: I realize that. I was following your practice.

MR. DICKINSON: Please do not follow any of my bad practices, but pick out the good ones.

THE WITNESS: I am answering to the best of my knowledge and belief. It is very difficult to outline what happened five or six years ago.

By MR. SEVERANCE:

Q. I quite appreciate that, Mr. Corey, and I am merely asking for the best recollection you have.

A. I believe one of the blast furnaces had been remodeled. It was necessary to remodel the blast furnaces, to make expenditures upon the coal mines and ore mines. That is all that I can give you, off-hand.

Q. I think that is quite enough.

Mr. Corey, you were asked yesterday if it was not true that a large order of rails had been sold by the Tennessee Coal, Iron & Railroad Company to the Harriman Lines shortly before, or within a few months before, this purchase by the Corporation; and you stated that such a sale had been made.

A. I would like to have my answer read, to see whether I did state that or not.

Q. It is my recollection that you did. What is the fact, anyway?

A. I want to see what the record says.

Q. I will find exactly what you did say, in a minute. Here it is, on page 5560. I will read the question and answer, both, so that you will see just what they were.

A. If you please.

Q. (Reading from page 5560 of the typewritten record):

"Q. Did you know Mr. Corey, before the acquirement of the control of the Tennessee Coal, Iron & Railroad Company, that Mr. Harriman had given to that company, or the Harriman Lines had, an order shortly prior to the taking

over of the company, of approximately 157,500 tons of steel rails?

"A. I knew that the Harriman Lines had given a large order to the Tennessee Coal, Iron & Railroad Company. The tonnage I do not recollect."

I think my statement was substantially correct as to what you said there?

A. Yes; it was; but I did not recollect. Let the answer stand.

Q. Is that answer correct, as you understand the facts?

A. That answer is correct. I do not know whether it was shortly before or not. That is the only point in my mind.

Q. That is what I wanted to ask you: If you happened to know how long prior it was?

A. No; I do not recollect.

Q. You do not know?

A. No.

Q. But you know, as a matter of fact, that a large order had been given?

A. Yes.

Q. Had that order been wholly executed at the time the Steel Corporation took over the Tennessee Coal, Iron & Railroad Company?

A. I do not recollect whether it had or had not.

Q. Is it not a fact that a large amount of those rails that were delivered under that order, had to be taken back by the Tennessee Coal, Iron & Railroad Company or some other subsidiary of the Steel Corporation, after the Corporation had acquired the Tennessee Company, on account of the bad quality of the rails?

A. I would not state that either. I would say that, to my recollection, there were numerous complaints concerning those rails. Whether a large tonnage was taken back and replaced I am not prepared to state.

Q. You do remember that some of them were taken back and replaced, do you not?

A. I do remember that some were taken back and that there were many complaints on account of the quality of the rails.

Q. Mr. Corey, is it not a fact that it then cost the Tennessee Coal, Iron & Railroad Company more money to make steel rails than the current price of steel rails, so they could not be sold at a profit? By "then" I mean in 1907, the time you acquired the property.

A. No; I cannot state that positively. I know their cost was very high, but whether it was higher than the prevailing price I am not prepared to state.

Q. You remember, do you, that the price that Mr. Harriman, or his companies contracted to pay for the order concerning which you were interrogated yesterday, was $29.00 a ton? Do you remember that?

A. Yes.

Q. Do you not know, as a matter of fact, that it cost $30.00 a ton to manufacture those identical rails?

A. I cannot state that positively, Mr. Severance. I can only answer it the way I did, that I know that costs were very high; but whether they were higher than $29.00 a ton I am not prepared to say.

Q. You know there was no profit in them, do you not?

A. That was our impression and understanding, that there was no profit in them.

Q. Considering the fact that there was a large investment in that property, and that the rails could not be made by the Tennessee Coal, Iron & Railroad Company at a profit, and that the other output of that company was so infinitesimal that you did not regard them in the light of competitors, would you say that any competition between the Tennessee Coal, Iron & Railroad Company and the large mills in the north could have been continued so as to amount to anything in the general competition of the country?

MR. DICKINSON: That is excepted to as irrelevant and incompetent.

By MR. SEVERANCE:

Q. I will ask for an answer.

(By request, stenographer repeated the question.)

A. Of course, this would only be an opinion.

Q. I understand that.

A. But, in my opinion, the competition on rails by the Tennessee Coal, Iron & Railroad Company, would have continued.

Q. Even though rails could not be made at a profit?

MR. DICKINSON: He has never said they could not be made at a profit. I except to that statement.

MR. SEVERANCE: I do not care whether he has or not. I am asking this question.

MR. DICKINSON: I object to that, on the ground that it assumes what has never been proven, and what the witness has not stated, that the rails could at no time subsequently have been made at a profit. There is no such evidence, and there has been no such statement made by the witness.

MR. SEVERANCE: I will withdraw the question, so as to avoid the objection that you make, Judge.

By MR. SEVERANCE:

Q. Mr. Corey, assuming for the purposes of my question it to be a fact that the Tennessee Coal, Iron & Railroad Company could not make rails at a profit, that they could not make rails at the price at which rails were current in the market; assuming, for the purpose of my question, that the Tennessee Coal, Iron & Railroad Company was in debt to the extent of several million dollars; that its mills were in the condition that you have stated them to be in, and the requirements were such as you have stated they were, do you still think that the Tennessee Coal, Iron & Railroad Company—assuming those facts; I am asking you to assume them, as to cost of production—could have continued as a substantial competitor to the northern mills in the rail market? I am asking you to assume those facts as true that I have stated in my question.

MR. DICKINSON: This is objected to, because it asks the opinion of the witness on a hypothetical question and a number of facts that form the basis of that question are assumed and not proven in the case.

MR. SEVERANCE: I will prove them before I get through.

MR. DICKINSON: Also upon the ground that it assumes that no other concern outside of the United States Steel Cor-

poration could have raised the money to develop the Tennessee property and develop its capacities.

MR. SEVERANCE: You don't doubt that, do you? Your own witness said that day before yesterday.

MR. DICKINSON: Said what?

MR. SEVERANCE: Col. Roosevelt, your own witness testified to that day before yesterday.

MR. DICKINSON: Testified to what?

MR. SEVERANCE: To just that.

MR. BOLLING: To just what you have said.

MR. DICKINSON: I do not think so.

MR. SEVERANCE: You would not impeach the testimony of Col. Roosevelt, your own witness.

MR. DICKINSON: I do not think he testified to anything of the kind.

By MR. SEVERANCE:

Q. I am asking you in giving your answer to assume the facts that I have stated in my question. I will hereafter offer proof as to those costs.

A. I have assumed all the facts as stated in your question and I am still of the opinion that the Tennessee Coal & Iron Company would have continued to manufacture rails and would have been a competitor in the manufacture of rails.

Q. How could they have afforded to do that if it cost more than they got for them?

MR. DICKINSON: This is objected to upon the assumption that that condition would have continued and could not have been bettered.

MR. SEVERANCE: The witness has stated that he has assumed that fact among others.

MR. COLTON: You do not say as to future time. You said could not at the time. You have not given him a chance as to what might have been done in the future?

MR. SEVERANCE: Have you finished your suggestion and interpolation to the witness?

(The pending question was read by the stenographer).

THE WITNESS: Do you press for an answer on that question?

By Mr. Severance:

Q. Why, certainly. I do not pay any attention to these objections, you know. They are just for the record.

A. I don't either; I pay attention to some of the questions.

Q. I hope to all of them.

A. Unfortunately so.

Q. You understand the question I asked you, how could they afford to continue that business if they could not manufacture at the selling price?

A. Well, in my opinion, the condition of the Tennessee Coal & Iron Company's plant at that time and the improvements that they were putting in were such that within a short time they could have reduced their cost somewhat. That was my opinion. And furthermore, it was my opinion that the management of the Tennessee Coal & Iron Company were placing a nuisance value upon their plant and they would continue to operate for a long time to come.

Q. Now, as bearing on that matter, I ask you whether it is not a fact that Mr. John W. Gates was one of the important men in the Tennessee Company.

A. Yes, sir.

Q. Had not Mr. Gates been to you as President of the Corporation at different times previous to this time when the stock was acquired under conditions which we will take up in a minute, and endeavored to interest you as representing the Steel Corporation in the purchase of the stock of that company?

A. No.

Q. Did he not say to you that you ought to buy it?

A. No, I have no recollection of any such conversation.

Q. Did Mr. Gates ever talk to you about buying the company, about the Steel Corporation buying the Tennessee property?

A. I don't believe he did.

Q. Did you never have any conversation with him on that subject?

A. Certainly, I had a conversation with Mr. Gates, but never—the question of purchase of the Tennessee by the Company never came up to me.

Q. Did Mr. Gates never approach you with reference to selling you the stock of that company?

A. No.

Q. Did he not suggest a price for that which you thought was exorbitant.

A. I would like to answer the question in my own way.

Q. I want you to?

A. I want to answer the question in my own way. On several occasions I met Mr. Gates. He did not come to my office by appointment, neither did I meet him by appointment, but we met in a casual way. He took opportunity on those occasions to call my attention to the value of the Tennessee Coal & Iron Company. I do not recollect that he ever suggested that we should buy the Tennessee Coal & Iron Company or that he ever made a direct offer to me for the purchase of the Tennessee Coal & Iron Company, but he wished to bring to my attention the value of the Tennessee Coal & Iron Company, the improvements that they were making, and he stated a number of times what he considered the Tennessee Coal & Iron Company was worth. It was his opinion that the stock of the Tennessee Coal & Iron Company was cheap at $250.00 a share. I cannot recollect all the conversation, but that was the gist of the conversation.

Q. Did he not in this conversation intimate to you that the United States Steel Corporation ought to own that property?

A. That is what he wished to convey, but I don't believe he said so.

Q. But he said things that gave you to understand that is what he wished to convey?

A. That was my understanding, of course, at the time, but I believe I invariably stated to Mr. Gates that I thought he was about $200.00 too high.

Q. That was always your opinion, was it not, that the Tennessee Coal, Iron & Railroad Company stock was not worth over $50.00 or $30.00 or $70.00 a share?

A. I always took the position that it was not worth over $50.00.

Q. Now, coming down to the time when the Corporation purchased the stock of the Tennessee Coal, Iron & Railroad

Company, were you present at any of the meetings of the sellers and purchasers at which the purchase was discussed.

A. I was.

Q. Where were those meetings held?

A. The principal meeting that I attended was at Mr. Morgan's library.

Q. Who were present at that meeting?

A. My recollection is that practically all of the Finance Committee of the Steel Corporation was present.

Q. And who else?

A. And Mr. Lewis Cass Ledyard, and Mr. Schley.

Q. Mr. Grant Schley?

A. Yes sir, Mr. Grant Schley.

Q. Of the firm of Moore & Schley?

A. Yes, sir.

Q. You recollect the fact that Mr. Gary and Mr. Frick went to Washington to interview President Roosevelt on the subject of this purchase; you remember that fact?

A. Yes, sir.

Q. Was this meeting you speak of prior to their going to Washington?

A. It was.

Q. Do you remember how long before?

A. About twenty-four hours.

Q. Do you remember whether or not it was represented at that meeting that if the United States Steel Corporation did not purchase the stock of the Tennessee Coal, Iron & Railroad Company that had been offered to them, that the firm of Moore & Schley would fail?

Mr. Dickinson: Objected to, because it is not stated who made any such representations.

By Mr. Severance:

Q. Answer the question, Mr. Corey.

A. Yes, sir.

Q. What were the representations that were made there with reference to the financial situation and the effect that the purchase of the Tennessee property by the United States Steel Corporation would have on the financial situation?

MR. DICKINSON: Objected to on the ground that it is incompetent to ask what representations were made, when the question should ask, what was said by the various parties and who said it.

MR. SEVERANCE: I am surprised that you make that objection after yesterday.

MR. DICKINSON: Well, I learned that from you.

MR. SEVERANCE: Well, I am teaching you something.

(The pending question was read by the stenographer).

THE WITNESS: Representations made at that meeting were that unless the Tennessee Coal, Iron & Railroad Company stock held by Moore & Schley was taken up, that Moore & Schley would fail and would pull down several banks and trust companies and cause a general panic.

By MR. SEVERANCE:

Q. Did you at that time entertain the same view that you have expressed here as to the real value of the Tennessee stock?

A. I did, and said furthermore that I did not favor the purchase of it.

Q. You did finally concur in the purchase, however, did you not, Mr. Corey, simply because of the financial situation and the benefit it was thought would result from the purchase without surrendering your opinion as to the real value of the property?

A. In the end I did concur, and to make the vote unanimous, voted for the purchase of the Tennessee Coal & Iron Company.

Q. Mr. Corey, you were asked yesterday or the day before more or less with reference to the Open Hearth situation. The mills of the Tennessee Company so far as they were equipped to manufacture rails were open hearth furnaces, were they not?

A. Yes, sir.

Q. They had nothing but open hearth furnaces?

A. Their ore was of such a nature that they could not manufacture anything but open hearth.

Q. From your investigation made at that time, what would you say as to the comparative cost of manufacturing billets at Birmingham, with mills at the plant of the Tennessee

Coal, Iron & Railroad Company, as compared with the cost of manufacturing billets in Pittsburgh or Chicago?

A. I do not understand your question.

Q. I asked you as to the comparative cost from your investigation of the manufacture of steel billets at Birmingham as against Pittsburgh and Chicago?

A. At that time?

Q. Yes.

A. The costs at Birmingham were materially higher than either Pittsburgh or Chicago.

Q. How much higher according to your best recollection or judgment?

A. I would not like to state offhand.

Q. At least two dollars per ton higher, would you say?

A. Yes, at least two dollars.

Q. Possibly more?

A. Probably more.

Q. What open hearth capacity did the Steel Corporation have in the north previous to this purchase; where was it located.

A. It had quite a large tonnage located at South Chicago, Donora, Clairton, Duquesne, Homestead, South Sharon.

Q. Were plans under way in October and November, 1907, the time of the Tennessee purchase, for a large extension of the open hearth capacity of the Corporation in the North?

A. I could not answer that unless I knew when we started the Gary plans.

Q. When was the Gary plant started, do you know?

A. I cannot recollect that either.

Q. Did they not start work at Gary back in 1904 or 1905?

A. I really do not recollect. Have you not a copy of the steel report here?

MR. COLTON: This will probably show you everything about Sharon and about the Indiana Company too.

THE WITNESS: That is the only important one, the Indiana Company.

MR. SEVERANCE: Yes, here it is. May I read this into the record?

MR. DICKINSON: Yes.

MR. SEVERANCE: I call attention to the book produced by counsel for the Government yesterday entitled "The Iron & Steel Works of the United States, 1908", Mr. Swank's publication, pages 30 and 31; Description of the Indiana Steel Company. I will read this:

"Building and Projected Steel Plant. Open-Hearth Steel Department, Gary. Construction commenced in August, 1906; twenty-eight 60-gross-ton Siemens stationary basic open hearth steel furnaces and two 300 ton metal mixers; product ingots; estimated annual capacity, 1,000,000 tons. Fuel, producer gas. Molten pig iron will be taken from the Gary Furnaces to the mixers and thence to the open-hearth furnaces in ladles. Twenty-eight additional 60-gross-ton Siemens stationary basic open-hearth furnaces are projected; work upon these furnaces will probably be commenced during the summer of 1907. The building open-hearth furnaces will probably be completed from August to December, 1908."

Now, calling your attention to that statement, I will ask you whether that corresponds with your recollection.

A. It does now that you have read that statement. I thought it was later, but I can answer the question now, if you will read it.

Q. Well, your recollection now corresponds with the statement in Swank's book?

A. Certainly.

Q. And those twenty-eight open hearth furnaces mentioned there have a capacity of a million tons?

A. Yes, sir.

Q. And the work on them had started within a year and three months before the purchase of the Tennessee property?

A. Yes, sir.

Q. It is also stated there that you contemplated doubling that open-hearth capacity, by twenty-eight additional ones. Has any work yet been done in building those twenty-eight additional ones?

A. Yes, sir.

Q. Are they also completed?

A. I could not answer that. They are not all completed—they were not completed at the time I resigned.

Q. Do you remember how long it took, Mr. Corey, to build the first twenty-eight furnaces?

A. I cannot recollect those details. Why not let that question go over until after luncheon and go on to something else, and let Mr. Bolling bring up the reports of the United States Steel Corporation for 1906, 1907, and 1908, and then I can answer the question intelligently from them.

Q. That is all right.

MR. COLTON: They are all in evidence, under stipulation.

By MR. SEVERANCE:

Q. That is a very good suggestion, Mr. Corey; we will do that. You were also asked yesterday as to whether railroads were not complaining as to accidents caused by broken rails and you replied that they were always complaining of that and you did not know that there were any more at that time than at any other time?

A. They are still complaining.

Q. Still complaining. Now, Mr. Corey, is it not a fact that there is almost continuously more or less disagreement between rail makers and railroad men as to the proper chemical analysis of rails, that is, as to what they should contain?

A. Yes.

Q. The effort on the part of the railroad men is to get a rail which will last as long as possible, is it not?

A. Yes, sir.

Q. As hard a rail as they consider fairly safe; is that true?

A. Yes, that has evidently been their aim to secure a rail that is as hard as can be made, and at the same time, unbreakable, which is impossible.

Q. As a matter of fact, the harder the rail the more brittle it is; is that not true?

A. Yes, sir.

Q. And the more liable accidents are to happen from broken rails?

A. Naturally.

Q. On the other hand, the hard rail, if it does not break, will from the natural wear and tear from the engines and cars going over it, last longer than the soft rail?

A. Certainly.

Q. The difficulty and the complaints that have been made have arisen from the desire, as you understand, of the railroad companies to be economical and safe at the same time; is that not true; and to avoid frequent renewals of rails?

A. They are certainly very economical.

Q. Have efforts been made by the steel manufacturers, Mr. Corey, from time to time, to induce railroads to use heavier rails and thereby avoid breaks?

A. Yes.

Q. They would cost more money, would they not? They are sold by the pound; are they not?

A. They would.

Q. Is it the general opinion in the steel trade, or was it when you were active in the business, that open hearth rails will last longer or are safer, either one or both, than Bessemer, or is there no settled opinion on the subject?

A. For many years that was a mooted question.

Q. It is a fact, is it not, that latterly there was an increased demand for open hearth steel?

A. Open hearth steel rails, you mean?

Q. Open hearth steel rails.

A. Yes.

Q. Mr. Corey, you stated yesterday that you thought Pittsburgh—I don't know whether you understood this question, but this is what you said:

MR. DICKINSON: What page?

MR. SEVERANCE: Pages 5562 and 5563.

By MR. SEVERANCE:

Q. There was a quotation read to you from the minutes of the Carnegie Steel Company, a statement made by Mr. Bope: Mr. McCausland asked the question as to whether Jones & Laughlin were providing any rail capacity at the Aliquippa plant, and Mr. Bope replied that he had heard that they are and that they are not, and then he said: "I think it would be a foolish thing to do to put in a rail plant as they would be worse off than we are, and if they have studied the situation it is not likely they will do so. Of course if the Ohio is slackwatered this would materially assist them, but even so Tennessee would have the call on most of the southwestern busi-

ness. Bethlehem seems to be well fixed on rails, but it is the only one of the eastern plants in this shape. Pennsylvania is shut down ostensibly for repairs, but we know it is on account of lack of orders."

Then after that quotation, on another branch of the business, which is not material, this question was put to you: "Q. What do you know, Mr. Corey, as to this statement, that 'it would be a foolish thing to put in a rail plant, as they would be worse off than we are.' In what respect was the Carnegie Company bad off in respect of rails?

"A. On account of location only.

"Q. As compared with what company was it bad off in regard to its location?

"A. As compared with both the Illinois and Tennessee.

"Q. By 'Tennessee' you mean the Tennessee Coal, Iron & Railroad Company?

"A. Yes."

Now, in so far as having access, immediate access to very great railroad mileage, Pittsburgh was as well off as Chicago practically, was it not, and much better off than Birmingham?

A. If the Carnegie Mill had existed in Pittsburgh alone, yes.

Q. Well, I am coming to that in a minute. The Pittsburgh district, I mean. That is true, is it not?

A. Give me your whole question, and I can answer it more intelligently.

Q. I am just taking it by districts. The Pittsburgh district had immediate or ready access to a greater tonnage of steel rails than either Chicago or Birmingham, had it not?

A. No, I would not say that as to Chicago, I think.

Q. But as to Birmingham?

A. Yes, sir.

Q. Much larger than Birmingham?

A. Yes, sir.

Q. The reason why you thought it would have been inadvisable for Jones & Laughlin to build a rail mill at Aliquippa was because of the number of mills then existing in the Pittsburgh district; was not that true?

A. In the eastern district.

Q. That is, Pittsburgh mills, Lackawanna, Bethlehem,

Pennsylvania, Maryland and the Cambria; they were all in this eastern field, were they not?

A. The eastern tonnage and the Pittsburgh district had to be divided up between all those manufacturing companies as far as rails were concerned.

MR. COLTON: You mentioned the Ohio Company. I do not know a company of that name.

MR. SEVERANCE: They call it the Ohio plant. You call it the National Steel.

MR. COLTON: Oh!

THE WITNESS: That is a branch of the Steel Corporation.

MR. SEVERANCE: Yes.

MR. COLTON: You are using the Corporation term?

MR. DICKINSON: It is the one near Steubenville?

THE WITNESS: No, Youngstown.

MR. SEVERANCE: Youngstown, not Steubenville.

MR. DICKINSON: Oh, yes.

By MR. SEVERANCE:

Q. The Chicago mills are peculiarly well located, are they not, by way of immediate access to railroads consuming large quantities of rails?

A. That district is the best location at the present time in the United States to manufacture and distribute any steel products.

Q. And that was what was in the minds of the managers of the Corporation when they set about to build the big Gary plant, was it not?

A. Certainly.

Q. Well, you did not mean by your testimony given yesterday—that is what I am getting at, with reference to the advantage or disadvantage of Pittsburgh and Chicago and Birmingham, to testify that the Tennessee Coal, Iron & Railroad Company was better located than the plants of the Corporation, taking the Carnegie and the Illinois together, in the way of having access to railroads which are large consumers of rails, did you?

A. If you take the relative position of the Carnegie and the Illinois, then I would say that would about evenly balance Tennessee.

Q. I did not catch your answer.

A. Well, to illustrate my point, Mr. Severance: The Illinois Steel Company has a better location for the manufacture and distribution of rails than the Carnegie Company has on account of the Carnegie being located in the eastern district with so many other mills in that district, then I say taking the relative position of Carnegie and Illinois and the amount of tonnage that they have tributary to their mills, that combining those two, then Tennessee is about on an equal basis with Carnegie and Illinois.

Q. That is, you mean, because it has no competitor in its own territory; is that the idea?

A. Exactly. I mean that the Illinois has the greatest advantage in the manufacture of rails or any other product for that matter. The Carnegie Company has a little the poorest on account of so many rail mills being located in the East. If you take the tonnage tributary to the Carnegie, and the tonnage that is tributary to Illinois and then take the tonnage tributary to the Tennessee in comparison to the size of the three plants, then I would say they were about equal.

Q. That is what I wanted to get at. You take into consideration the size of the Plants?

A. Certainly.

Q. That is what I wanted to clear up. That advantage consists entirely in the size. That had nothing to do with the cheapness of manufacture?

A. It is only in the distribution.

Q. And sale, yes; on account of location?

A. Yes, sir.

Q. That is what I assumed you meant. That is what I wanted to clear up.

(Whereupon at 12:25 a recess was taken until 2:00 o'clock p. m.).

AFTERNOON SESSION.

At the expiration of the recess the hearing was resumed.

WILLIAM E. COREY,

a witness produced on behalf of the United States, being previously sworn, was recalled and testified as follows:

CROSS EXAMINATION (Continued).

By Mr. Severance:

Q. You were interrogated yesterday with reference to what is known as the Pittsburgh base. As I understand it, that means that prices are based on the current price at Pittsburgh, plus the freight?

A. To destination.

Q. To destination?

A. That is correct.

Q. Isn't it a fact that during the time you were president of the United States Steel Corporation it was the practice of that corporation to have uniform prices on its products for different parts of the country subject to this Pittsburgh base, and to issue and publish pamphlets or circulars giving the prices; on staple articles, I mean.

A. I have no doubt it is true, but I do not recollect.

Q. You do not remember about that?

A. No.

Q. The Pittsburgh base of prices was nothing that had grown up after the Corporation was organized, but that dated long prior to that time, did it not?

A. Yes, sir, many years.

Q. Did it grow out of the fact that Pittsburgh was originally the principal manufacturing point for iron and steel?

A. In my opinion, yes.

Q. And that base was used, was it not, not only by the Steel Corporation but by the other steel manufacturers?

A. Used by all iron and steel manufacturers.

Q. You were asked with reference to a contract taken by

the Republic Iron & Steel Company in 1904 with the Pittsburgh Steel Company; you recollect being interrogated about that, do you not?

A. I do.

Q. It was quite a large tonnage?

A. Yes.

Q. And at a very considerable reduction, you stated, from the current ordinary market price at that time; is that true?

A. That is true.

Q. There was also read to you by counsel yesterday in connection with one of the questions a statement by Mr. Bope as to the activities of the competitors of the Steel Corporation in the eastern territory. You recall that, don't you?

A. No.

Q. Don't remember that?

A. No.

Q. I will find it.

MR. COLTON: When you do find that, Mr. Severance, will you kindly give me the reference to it.

MR. SEVERANCE: Yes, page 5551.

By MR. SEVERANCE:

Q. It was when the matter of open hearth steel was under consideration in your testimony, and Judge Dickinson in examining you read from the record book of the Carnegie Steel Company of December 24th, 1906. I am calling attention to the language on page 5551:

"MR. DINKEY: We are getting into them as fast as we can. We have the Ohio Open Hearth authorized, and this will be 1,200 tons of ingots per day that can go into rails if necessary.

"MR. BOPE: That is just an example of the increasing competition we have in nearly every line, and we shall have to keep on strengthening our organization to keep in touch with customers.

"In the East particularly it is getting very aggressive, and we do not dare let up for a minute."

I read you that just to call it to your attention. You recall it was read to you yesterday, don't you?

A. Yes, sir.

Q. What is the fact, Mr. Corey, as to whether from 1901, the time of the organization of the Steel Corporation, down to the time you left your executive position in the Corporation, as to whether or not the competitors of the Steel Corporation grew continually in extent of output and ability to compete?

A. In that period the competitors grew and flourished like a green bay tree.

Q. Having that in view, did the organization of the Steel Corporation restrict or prevent competition, or did it, as a matter of fact, increase competition in this country between it and its competitors—and the other companies?

Mr. Dickinson: Will you please read that question again?

Mr. Severance: Strike out that question. I can see, perhaps, it is objectionable in form.

Q. Mr. Bope said in this expression that was read to you by counsel yesterday, that is just an example of the increasing competition we have in nearly every line. Do you agree with that, that the competition in nearly every line was increasing from 1901 up to 1906, and, in fact, up to the time you left the Corporation?

A. I do.

Q. You had some information, had you not, Mr. Corey, as to the enlargement of the facilities of your principal competitors; I do not mean accurate information, but in a general way you knew as to their growth, did you not?

A. Certainly.

Q. I will ask you as to Jones & Laughlin; that was one of your largest competitors, was it not?

A. Yes.

Q. Did that company increase its tonnage and effectiveness as a competitor during the time that I have mentioned from 1901 up to 1911, when you left the Corporation?

A. They were building a plant, which has been completed, I believe, since 1910, with more than double their capacity.

Q. That is the Aliquippa plant?

A. That is the Aliquippa plant.

Q. They have gone into new lines, have they not?

A. They have.

Q. What are those new lines?

A. Sheet and tin plate and wire.

Q. How about the Lackawanna Steel; has that grown during that period?

A. They built a new plant at Buffalo, which more than doubled their previous capacity.

Q. How about the Inland Steel of Chicago?

A. The Inland Steel was an entirely new plant, that was built during the period that you have mentioned.

Q. Is that a large plant?

A. That is a large plant.

Q. Located on the lake, this side of Chicago, isn't it?

A. Yes.

Q. How near Chicago?

A. Located at Indiana Harbor, just outside of Chicago.

Q. It is a fact, is it not, that in spite of the acquisition of the Tennessee Coal & Iron and of the Union Steel Company and of the construction of the Gary plant which you have just described here, that the percentage of output of the Steel Corporation is less than it was at the time it was organized?

A. It is less in proportion to the total.

Q. To the total?

A. Yes.

Q. That is, the growth of its competitors during this period has been greater than the growth of the Corporation itself, is that right?

A. It is.

MR. COLTON: I would like to make a suggestion as to whether you were talking about ore or whether you are talking about steel products or pig iron.

MR. SEVERANCE: When you are talking about the output of a steel plant, what are you talking about?

THE WITNESS: I understood it to mean finished products.

BY MR. SEVERANCE:

Q. I mean steel products; that is what I am asking you about.

A. Finished steel products, I understood the question to mean, and I answered accordingly.

Q. That is what I intended to ask.

During that period the consumption of steel in the United States has increased very largely, has it not?

A. My recollection is that the consumption from 1901 to 1910 has doubled.

Q. Steel is now used for purposes for which it was not generally used in 1901, is it not, such as large structural buildings?

A. Steel was used for large buildings long before 1901.

Q. Very true; but not to the extent or proportion that it has since been used, was it?

A. I would not like to answer that question. I could not say.

Q. The total amount used now is much larger than it was then, is it not?

A. Assuredly. It is double.

Q. I mean in that branch?

A. It is double.

Q. The weight of steel rails has increased?

A. Yes.

Q. About how much, would you say, according to your best estimate, per yard?

A. I would judge twenty per cent.

Q. Necessarily, the consumption of iron ore has largely increased during that period, has it not?

A. Certainly.

Q. Do you regard it as simple business prudence for a steel manufacturer to own a supply of ore which will last for a substanial number of years ahead in reserve?

A. Certainly; just as much as they can secure; as much as they can comfortably carry.

Q. That has been recognized by the various steel manufacturers as proper business prudence, has it not?

A. Yes, sir.

Q. You were asked yesterday with reference to the Hill lease, and, as I understood, you stated that you thought the price was double what it should have been?

A. I did.

Q. That expression, I think, perhaps you will want to correct a little, Mr. Corey, on reflection. I want to give you an opportunity to do so, if you care to do so.

You remember, do you not, that that lease provided a certain price delivered at the dock, at Superior?

A. Yes, sir.

Q. And that the initial price was $1.65, was it not, at the dock?

A. I think it was $1.55,—85 cents and 70 cents.

Q. Eighty cents, was it not? Eighty cents was the railroad ore rate at that time, was it not? I will state to you that it was.

A. Yes.

MR. DICKINSON: I think the witness had better testify.

MR. SEVERANCE: That is a very small matter.

MR. BOLLING: It is a matter of the most public record.

THE WITNESS: That would be a matter of record. I thought it was seventy cents. It is, possibly, eighty cents.

By MR. SEVERANCE:

Q. Your answer was made upon the idea that the rate was seventy cents?

A. Yes.

MR. COLTON: According to the grade, there would be a variation in the price of the ore.

MR. SEVERANCE: Certainly, there was a variation in the price of the ore. It would depend upon the units of iron.

MR. COLTON: The delivered price of ore varied with the units of iron.

MR. SEVERANCE: But it was based upon $1.65; that is 85 cents above the ore rate.

THE WITNESS: Yes.

By MR. SEVERANCE:

Q. When you said you thought the price was double what it should have been; you did not mean that instead of $1.65 it should have been half of that, or 82½ cents, which would have left only 2½ cents for the ore, over and above the ore rate on the train, did you?

A. No.

MR. DICKINSON: Let him state what he did mean.

MR. SEVERANCE: Very well.

THE WITNESS: What I did mean was that my idea as to the value of the ore covered by the Hill leases was that it was not in excess of 50 cents a ton.

MR. DICKINSON: The royalty, you mean?

THE WITNESS: The royalty.

By MR. SEVERANCE:

Q. And when you used the expression "double what it should have been," you meant double the net amount that accrued for the ore, leaving out the freight rate?

A. The actual royalty for the ore is what I meant.

Q. I knew perfectly well that is what you meant, but I wanted to get it clear on the record.

MR. DICKINSON: I think we all understood that.

MR. SEVERANCE: It was not clear in the record, because he said the price, and the price, of course, is the price delivered at the dock. I thought he would want to correct that.

By MR. SEVERANCE:

Q. And you felt that 50 cents would have been a fair royalty on the ore itself, leaving out of consideration the question of transportation?

MR. DICKINSON: I object to that. I do not understand he has stated that would be fair. He said that the price charged was twice too much. I have not understood him to express an opinion as to what would be fair.

MR. SEVERANCE: He just said 50 cents.

THE WITNESS: I said not in excess of 50 cents a ton.

MR. DICKINSON: Not in excess of 50 cents a ton?

THE WITNESS: Yes. If you figure that ore over a term of years, there was an increasing amount on the ore.

MR. DICKINSON: Yes.

THE WITNESS: That made the ore, instead of costing 85 cents a ton, really cost, if the lease obtained for 50 years, $1.50 a ton in the ground.

By MR. SEVERANCE:

Q. In the negotiation of that lease you were opposed to taking it, were you not, on account of the rate?

A. On account of the price, solely.

Q. And there was a good deal of discussion and disagreement in the directory of the corporation, was there not, on the subject of that lease before it was finally adopted?

A. If you would change that question from "directory" to "Finance Committee"—

Q. (Interposing.) Finance Committee is what I meant.

A. I would say yes.

Q. Before it was adopted there was a provision inserted, back towards the end of the negotiations, giving the Corporation the right, or giving the subsidiary of the Corporation to whom the lease ran the right, to cancel this, was there not?

A. There was.

Q. And after the insertion of that provision, I think you and every one else finally voted for it, did you not?

MR. DICKINSON: I except to that form of question.

MR. SEVERANCE: Why? This is cross examination.

MR. DICKINSON: I object to your telling him what you think. You have no right to tell him what you think about it.

MR. SEVERANCE: I quite disagree with you. I will stand on the question.

MR. DICKINSON: I will not argue it. I note my exception. I object to it as improper examination.

MR. SEVERANCE: After the course of the direct examination yesterday, that is rather an amusing objection. Please go on, Mr. Corey.

(By request of the witness, the question was repeated by the stenographer, as follows:)

"Q. And after the insertion of that provision, I think you and every one else finally voted for it, did you not?"

By MR. SEVERANCE:

Q. I mean, every one in the Finance Committee?

MR. DICKINSON: I object, further, on the ground that the action of the Finance Committee as recorded is the best evidence.

THE WITNESS: While I voted for the acceptance of the lease in the final vote, I was not in favor of the lease even with that clause inserted.

By Mr. Severance:

Q. But you did vote for it with the rest?

A. I did.

Q. But up to that time you had opposed the making of the lease, had you not?

A. That is true.

Q. If the rate of royalty had been what seemed to you satisfactory, you would have considered it reasonable business prudence to have acquired that ore, would you not?

A. Certainly.

Q. You were asked by counsel for the Government a question as to whether you needed that ore—I will read exactly what the question and answer were (reading from page 5630 of the typewritten record):

"Q. Did you, at that time, need that property for the operation of the properties of the United States Steel Corporation?

"A. No."

All that you meant by that answer was, was it not, that you did not need the property at the moment; that is, you had ore that you could use at that time, without using the Hill ore? That is all you meant by that, was it not?

A. I meant that we did not need that ore for use in the immediate future.

Q. Yes; but as a reasonable ore reserve, you would favor the purchase of it because the time would come when you would need it?

A. Certainly; if the price was satisfactory, I favored securing all the ore properties that we could secure.

Q. Because the consumption of ore was increasing all the time, was it not, with the growth of the business?

A. It had doubled in nine years.

Q. And is constantly increasing?

A. It is.

Q. Counsel for the Government has brought out several times, in justification of the form of some of his questions, that you are still a director of the Corporation. Do you happen to know that last year, the year 1912, more ore was consumed than in any previous year by the Corporation?

A. Yes; and, furthermore, that the Corporation brought

down 24,000,000 tons of ore in the season of 1912, which was a record shipment.

Q. You were asked yesterday with reference to the so-called Gary dinners and the committees that were appointed following those dinners; and as to the purpose and effect of those committees. You recall that, do you not?

A. I do.

Q. It is a fact, is it not, that, as you stated, there was no agreement on prices made at those meetings?

A. Not to my knowledge were any agreements made.

Q. As a matter of fact, you were very anxious not to do anything which could be challenged as illegal, were you not?

A. Yes, I thought we were rather careful.

Q. Now, I do not want the names, but I want to know if it is not a fact that in all that you did you acted under the advice of competent counsel; I don't want the names of counsel, but competent counsel, outside of the regular counsel of the Corporation?

MR. DICKINSON: This question is objected to as being too broad, not showing the particular things that were comprehended in that question, and it is insisted that the witness should first state what things were done, and then the question should be asked whether those things that were done were done under advice as suggested.

THE WITNESS: Yes.

MR. DICKINSON: I would like to ask—it may save some trouble hereafter—what he means by the scope of that answer, whether he means to confine it to what was done when he was present or not, and things that came within his actual knowledge.

THE WITNESS: Yes, what I did personally, the business that I personally transacted, my answer referred to.

By MR. SEVERANCE:

Q. And you adhered strictly to the advice given you by counsel as to what was lawful to be done, didn't you?

A. I followed the straight line just as closely as it could be followed.

Q. Did you have counsel to attend these meetings, some of them?

A. Yes, sir.

Q. And followed his advice, or their advice?

A. I followed his advice. There is one point I would like to have inserted in the record as well, that the counsel of the Steel Corporation was also present at times.

Q. At times?

A. Yes, sir.

Q. Yesterday, in answer to counsel, you gave the following testimony, Mr. Corey:

"Q. State whether or not it was the purpose in the creation of these sub-committees to reach a general understanding as to prices of iron and steel products and to bring about the maintenance of them," and you stated "Yes."

By that statement you did not mean to testify that an agreement was made on the price, you just stated to me that there was no such agreement, and you did not mean by that answer to testify that any agreement was made as to price, did you?

A. No; and I so stated yesterday.

Q. What you did at those meetings was to announce the price at which you proposed to sell your products, wasn't it?

A. Yes, sir.

Q. And you were advised that you had the legal right so to do, were you not?

A. Yes.

Q. And other gentlemen did the same thing at those meetings, did they not?

A. They did.

Q. Now, the effect of this announcement was, as you stated, to maintain prices, was it not?

A. It was.

Q. As a matter of fact, however, prices were not strictly maintained at the figures named in those meetings by gentlemen, were they; it came to your knowledge that some of your competitors were selling at different prices than the ones named, did it not, from time to time?

A. Yes.

Q. Mr. Corey, you were asked yesterday with reference to certain pools on plate and structural, and things of that sort:

those were all abandoned about the end of 1904 or early in 1905, were they not.

A. So I testified yesterday; that is my recollection.

Q. Now, those were abandoned under the advice of one of the prominent law firms in the City of New York, were they not, and wound up under their advice, without asking the names of the counsel?

A. Yes, sir.

Q. And they were people disconnected from the Corporation, not the regular counsel of the Corporation?

A. Yes.

Q. And the instructions were to wipe out everything of any sort that might be considered illegal by counsel in the way of pools or combinations?

MR. DICKINSON: Whose instructions do you mean?

MR. SEVERANCE: Instructions to the presidents of the subsidiary companies.

MR. DICKINSON: You mean their counsel?

MR. SEVERANCE: I will put the question again. Strike it out.

By MR. SEVERANCE:

Q. Instructions were given by Judge Gary and yourself to the presidents of the subsidiary companies to wipe out all combinations and pools and everything of that kind that might be regarded by these counsel as illegal?

A. If I recollect correctly I wrote a letter specifically issuing those instructions.

Q. That was after a conference with Judge Gary on the subject, wasn't it?

A. Yes.

Q. In which he had taken that same position?

A. Yes.

Q. And you assumed that those instructions had been followed, did you not?

A. I did.

Q. At the same time that this action was taken regarding the plate and structural and other pools, this rail pool, whatever it was, was wound up in the same way and under the same direction, wasn't it?

A. The domestic rail pool, yes.

Q. That is what I am talking about, this domestic rail pool.

A. Yes.

Q. And what was subsequently done by way of meetings between competitors as to rails, or other subjects for that matter, was, so far as you were advised, simply in line with what counsel had advised was lawful and proper?

A. Yes.

Q. The counsel that acted in this matter were the same counsel that you afterwards conferred with subsequent to the Gary dinners, were they not?

A. Yes.

Q. One thing that you said yesterday with reference to these pools was this; I will read it to you:

"Q. Mr. Corey, was it or not known to the executive officers of the United States Steel Corporation throughout the period that you have named that subsidiaries of that corporation were operating under such agreements as you have described?

"THE WITNESS: I should like you to more fully define the question, Judge, and name the officers.

"By MR. DICKINSON:

"Q. During that period you were president of the Corporation, were you not?

"A. I was.

"MR. SEVERANCE: Just a moment. When did you become President, Mr. Corey?

"THE WITNESS: In 1903.

"By MR. DICKINSON:

"Q. Who was Chairman of the Board?

"A. E. H. Gary.

"Q. Did he know about it?

"A. He did."

Did you mean to testify, Mr. Corey, that Judge Gary knew anything about any of these pools or combinations, as they are called, structural, plate, and so forth, or that he simply knew of this rail pool until at or about the time they were wound up?

A. He knew about them all the time.

Q. All of the pools?

A. Yes.

Q. Are you sure?

A. Absolutely.

Q. How do you know it?

A. Because he attended some of the meetings.

Q. Will you state what meetings he attended outside of the rail meetings? You testified yesterday he attended some rail meetings.

A. Yes.

Q. What other meeting did he ever attend, what pool meeting, and when?

A. Plate and structural meetings.

Q. When?

A. I cannot give the exact date.

Q. Who were present?

A. Messrs. Felton, King, Schwab.

Q. You, of course?

A. I was present.

Q. Who else?

A. I do not recollect the other members that were present.

Q. What year was that?

A. Either 1902 or 1903.

Q. You did not come down here yourself until 1903?

A. Yes.

Q. Did you attend any structural meetings when you were president of the Carnegie Steel Company?

A. Yes, sir.

Q. And was it before you were president of the Steel Corporation that you say Judge Gary attended one of those meetings?

A. Yes, sir.

Q. That was when you were still president of the Carnegie Company?

A. Yes.

Q. And Mr. Schwab president of the Steel Corporation?

A. Yes.

Q. Do you feel entirely clear about that, that he attended any meeting of the plate and structural association unless it was just about the time—

A. That is my recollection, that that happened in 1902 or 1903, when I was still president of the Carnegie Company.

Q. Do you feel sure of that, Mr. Corey?

A. I do.

Q. You do?

A. Yes.

Q. Was this a plate meeting or a structural meeting that you say he attended?

A. My recollection is that it was a combination of both; they were held jointly, one immediately after the other.

Q. And where was the meeting held?

A. At the Waldorf.

Q. Whereabouts in the Waldorf?

A. In one of the rooms upstairs, one of the parlors.

Q. Was that a meeting at which prices were fixed?

A. That was one of the regular meetings. I cannot remember whether prices were fixed specifically at that meeting or not.

Q. Do you undertake to say that they were even discussed at any such meeting that Judge Gary attended?

A. Yes.

Q. But you will not say that they were fixed?

A. No.

Q. That was a meeting, you say, of the plate association, followed by a structural meeting?

A. Yes.

Q. And Judge Gary appeared at that meeting with these other gentlemen you have named, and participated in the meeting?

A. Yes.

Q. Who presided at that meeting?

A. I do not recollect.

Q. Do you remember any other instance in which Judge Gary appeared at a plate or structural meeting except the one you have stated?

A. No; I could not state specifically any other meeting.

Q. Do you know of any meeting of any other one of these associations that he ever attended, so far as you know?

A. Other than rails?

Q. Other than rails.

A. No. I cannot state specifically that he did.

Q. Did you, at any time, have any conversation with him with reference to any other of these associations which you can fix as showing any knowledge on his part of their existence?

MR. COLTON: Will you pardon a suggestion?

MR. SEVERANCE: Yes.

MR. COLTON: You said "other than these associations." Do you include both structural and plate?

MR. SEVERANCE: Plate and structural.

MR. COLTON: Everything other than rails?

MR. SEVERANCE: Rails and plate and structural. He says he attended a meeting of the plate and structural.

MR. DICKINSON: Read the question.

MR. SEVERANCE: I will make the question more definite. I will add to the question "I mean other than the plate, structural and rail, which you have mentioned."

(By request, the stenographer read the question as amended, as follows:)

"Q. Did you, at any time, have any conversation with him with reference to any other of these associations which you can fix as showing any knowledge on his part of their existence? I mean, other than the plate, structural and rail, which you have mentioned."

MR. DICKINSON: Would you mind asking as to any associations?

MR. SEVERANCE: I have asked him that.

MR. DICKINSON: You are speaking now of conversations. Before you have spoken of attending meetings.

MR. SEVERANCE: He said he did not remember his attending any other meetings.

MR. DICKINSON: I know. Now you ask whether he had any conversation with Judge Gary. Will you not make your question broad enough to cover conversations in regard to any pools other than rails?

MR. SEVERANCE: That is what I have asked.

THE WITNESS: No; you have not. You have asked other than rails, plate or structural.

MR. SEVERANCE: Certainly. That is right.

Let me explain. The witness has already testified, in answer to you yesterday, that Judge Gary attended a rail meeting.

MR. DICKINSON: I understand.

MR. SEVERANCE: He has just testified, in answer to my question, that he attended a plate and structural meeting. Now, he has stated, generally, that the Judge knew about all these. Now I ask him for any conversations with him with reference to any of the others than these three,—plate, structural and rail, which he can fix as showing whether the Judge did have any knowledge of it.

MR. DICKINSON: That is exactly my point; and the answer then would exclude any conversation he had had with Judge Gary in regard to structural and plate.

MR. SEVERANCE: Certainly. I will ask that afterwards, if you want me to.

MR. DICKINSON: All right.

MR. SEVERANCE: I am trying to fix what information he has as to the Judge's knowledge of these various associations. There were a lot of them.

MR. DICKINSON: You have excluded any conversation with regard to these two.

MR. SEVERANCE: I have excluded conversation with reference to the ones that he just stated the Judge attended. If he attended, he must have known about them.

MR. DICKINSON: He said he attended one meeting. All right. Pursue your own way.

THE WITNESS: I have no recollection of attending any meetings other than those myself, so I have no recollection of discussing the matter with Judge Gary.

By MR. SEVERANCE:

Q. Well, then, in your answer yesterday, and in what you have said to me in general about his knowledge, you limit your testimony, do you, to the rail, plate and structural, as far as your knowledge of his knowledge is concerned?

A. Yes.

Q. Let me refresh your recollection, Mr. Corey: Do you not remember a conversation with Judge Gary at the time

instructions were given to wind up all these existing pools, in which Judge Gary called attention to an indictment that had been found against certain officials of the Bridge Company in Ohio? Do you remember that?

A. Go on with it. Possibly I—

Q. (Interposing.) I say, do you remember about that? Do you remember about such a conversation? At the time instructions were given to wind up all of these pools, in the manner you have stated.

A. We had many conversations on the subject, and I do not know that I can recollect that particular subject at all.

Q. Do you not remember that Judge Gary expressed to you surprise at learning of the existence of these various pools immediately preceding the time that instructions were given to wind them up?

A. In the Bridge Company, yes.

Q. You still feel sure, do you, that Judge Gary attended a plate and structural meeting in 1902 or 1903?

A. I certainly do, or I should not have testified to it.

Q. Can you name any one else that was there except Messrs. Felton, King, Schwab and yourself and Judge Gary?

A. No; I cannot be positive about the other men present, but I know that there were other men present.

Q. And you cannot tell who they were?

A. I cannot remember, no.

Q. And you cannot fix the date any more definitely than you have?

A. No.

Q. It was in 1902 or 1903, and was previous to the time you moved to New York?

A. Yes.

Q. Was there anybody there representing the Lackawanna Steel Company?

A. I do not think they were interested in plate and structural at that period.

Q. Was there anybody there representing the Cambria?

A. It is possible that Mr. Stackhouse may have been there, but I cannot state positively.

Q. Was there anybody representing Illinois Steel?

A. I cannot be certain.

Q. Was there anybody there representing the Phoenix Steel Company?

A. I cannot be certain whether there was or not.

Q. Was there anybody there representing Lukens? Do you remember?

A. I do not remember.

Q. Was there anybody there representing Worth?

A. I do not remember. If Lukens was there, Worth would be there.

Q. Was anybody there representing the American Steel & Wire Company?

A. No.

Q. Or the Crucible Steel Company of America?

A. No, sir; they would not be interested.

Q. They would not be represented in a plate pool?

A. I do not think so.

Q. Who represented the American Bridge Company, if anybody, in this structural meeting?

A. I do not remember.

Q. Did anybody represent them?

A. I would presume so. The American Bridge Company? No, not at that meeting. They would not be represented.

Q. Not at the structural steel meeting?

A. No; because they were a fabricator.

Q. Only?

A. They rarely attended.

Q. What about Penoyd? Do they not do anything there but fabricate?

A. Yes; but they are principally a fabricating company.

Q. Was anybody there representing the Passaic Rolling Mill Company?

A. I do not remember; there might have been.

Q. You cannot name any more?

A. No.

Q. How frequently did you attend plate meetings yourself? How often were they held?

A. To my recollection they were held every three or six months. However, that might be an error.

Q. You attended all of them, did you not?

A. No; I attended a number.

Q. After you came to New York, as well as before?

A. Yes.

Q. How about structural meetings? How often were they held?

A. About the same.

Q. You attended a number of them?

A. Yes.

Q. And you have no recollection of Judge Gary ever appearing but this one time, which was in 1902 or 1903?

A. Well, I think that he did, but I could not testify to it.

Q. You now think he did?

A. Yes.

Q. But the only case you remember about is this one time?

A. The only one I can specify.

Q. What was particularly transacted at that meeting? Do you remember that?

A. No; I could not state specifically what was transacted.

Q. Mr. Schwab was there representing the Steel Corporation, was he not?

A. Yes.

Q. What was the necessity for Judge Gary's being there if Mr. Schwab was there?

A. I say that I cannot state specifically what was transacted.

Q. Did Judge Gary ever go to a meeting with you when you were president, representing the Corporation, of either plate or structural?

A. I cannot state specifically, but we have attended rail meetings together.

Q. You stated that yesterday.

A. Yes.

Q. That is not what I asked you about.

A. I answered you, then.

Q. That is what you answered about?

A. That is what I answered you—that I could not state specifically that he did.

Q. Mr. Corey, toward the latter end of your connection with the Corporation, you were not at all times in accord with Mr. Judge Gary, were you, in matters of management?

A. I don't know that I care to answer that question. Is it important?

Q. Well, I will put it in another way. I want to put it perfectly pleasant to you.

A. That is perfectly pleasant.

Q. I know I am perfectly pleasant and you are perfectly pleasant. As a matter of fact, when you left the Corporation you went away with some feeling against Judge Gary, did you not?

A. We were not always in accord concerning the policy of the Corporation, but I don't know that there was any particular ill feeling between the Judge and myself.

Q. You think at the time you left there you felt cordial towards the Judge, Mr. Corey?

A. I would not say that I felt as cordial as I had at some previous period.

Q. You had had some disagreements, had you not, with reference to the respective authority of the President and the Chairman of the Board some months before you resigned?

A. Yes.

Q. As a result of which the matter as to whether you were chief executive or Judge Gary was the chief executive had been put up to the Finance Committee for settlement, isn't that true?

A. That is true.

Q. And the Finance Committee in that matter supported Judge Gary's supremacy, did they not?

MR. COLTON: Would you give the date of that?

MR. SEVERANCE: In 1910.

MR. COLTON: What date in 1910?

MR. SEVERANCE: January.

By MR. SEVERANCE:

Q. That is a fact, isn't it?

A. I believe that is correct.

Q. Mr. Corey, up to three years ago, or about three years ago, the Corporation were always necessarily purchasers of pig iron, were they not; they did not make as much iron as they melted?

A. You mean three years from the present date?

Q. Yes.

A. From to-day?

Q. Yes, up to about 1910, the first of January, around that period.

MR. DICKINSON: Do you mean up to that time, or all the time prior to that time?

MR. SEVERANCE: Strike out the whole question, and I will put it again and get it clear.

MR. COLTON: Is this capacity or production? Do you mean they did not have capacity to make all they needed?

MR. SEVERANCE: I will make the question perfectly clear.

By MR. SEVERANCE:

Q. Up to about three years ago from the time of the organization of the Corporation, it was obliged to purchase in the market a certain amount, more or less, of pig iron, owing to the fact that its blast furnace capacity was not sufficient to supply the needs of the steel works; isn't that true?

A. That is true.

Q. You were asked with reference to these sliding scale contracts; those were for billets, were they not, those contracts, that is what you furnished under those sliding scale contracts?

A. Principally.

Q. And those billets were not to be resold in the markets by the purchasers, but were used by them, were they not?

A. That was in the contract.

MR. SEVERANCE: That is all.

MR. KELLOGG: I wish to ask a few questions of Mr. Corey.

CROSS EXAMINATION.

By MR. KELLOGG:

Q. There are a few questions I want to ask you, Mr. Corey. You have said to-day, making more clear what you said yesterday, that you considered the Great Northern ores were not worth more than fifty cents a ton so far as a royalty proposition was concerned, is that correct?

A. In my opinion.

Q. Would you mind telling me upon what basis you reach that opinion?

A. I base my opinion upon the prices at which leases had been made up to and including the time of the making of the Hill lease.

Q. Did you at that time have a list before you of leases that had been made in that general region and of that same general quality of ore by various owners to various lessees?

A. My recollection is that I had a list of the principal leases.

Q. Of the principal leases?

A. Of the principal leases prepared by our ore company.

Q. And that was brought down to the date of the Hill lease, which was in 1907?

A. That is my recollection.

Q. Aside from such information as this list which you speak of may have given you, had you any other knowledge as to what leases may have been made of such lands during this general period?

A. I had my knowledge of that, and I also had knowledge that we had recently made a lease with Mr. Walker for certain portions of his ores that were connected in part with the Hill leases.

Q. How many acres were involved there, how many tons of ore were estimated to be included in that lease, and what was the date of the lease, if you have it in mind?

A. I could not give you that information without consulting the records.

Q. What price was paid in that lease; perhaps I can find it in some memorandum that I have, what royalty price was paid?

A. My recollection is it was fifty cents a ton.

Q. What quality ore do you remember, Bessemer or non-Bessemer?

A. Part Bessemer and part non-Bessemer; I considered it equally as good as the ores covered by the Hill lease.

Q. What per cent. of metallic content?

A. I could not answer that unless I looked at the lease.

Q. We have then this list which was made up; are you sure there was such a list or are you giving a general recollection?

A. Yes I saw a list that had been prepared.

Q. These leases which were set forth in that list were leases made by all sorts of lessors to all sorts of lessees, or did they have reference to the Steel Corporation leases or subsidiary company leases?

A. They were principally leases that the Steel Corporation was interested in.

Q. So that this list, if your recollection is now correct, did not purport to cover the entire range of leases which were being made by all sorts of people during that time?

A. No.

Q. Aside from which I assume this Walker lease was included—am I correct as to that?

A. Yes, I believe so.

Q. Aside from this list, will you tell me what other grounds you had for the opinion that fifty cents was the reasonable royalty to pay for this ore?

A. I think that was a sufficient reason.

Q. I am not questioning that at the moment; I am merely asking you whether there were any other facts that you had in your mind at the time.

A. No.

Q. Before the time of the Hill lease in 1907, had you been recently to the Mesabi Range, the Missabe country, personally to make any investigation as to the condition of ore fields and ore markets?

A. I do not know that I had been there since 1904.

Q. By the way, was not the Lorain Steel Company—was that one of the Steel Company's subsidiaries or was that an outside corporation?

A. That was one of the subsidiaries.

Q. You, having had a list of leases, would naturally have had included in that list any leases made to the Lorain Steel Company about this time?

A. I would presume so.

Q. Would you mind explaining to me, what seems to be a little inconsistent here,—I find on a list which I have and which I am credibly informed is correct, that on January 7, 1907—to repeat what I was saying, I have here a list which is prepared for me by the officials of the Great Northern Ore

Trustees, and which shows a lease made on January 1, 1907, by the Graham Iron Company to the Lorain Iron Mining Company running seventeen years at 75 cents per ton, the tonnage estimated at one million, five hundred thousand tons, and this was a mine that had not yet been opened, but my informant states he understood the grade to be a good quality non Bessemer, and that it would be probably opened by the stripping method. May I ask you whether in the list you are speaking of, you now have any recollection of seeing a memorandum concerning this lease made by one of your own subsidiaries?

A. No, I do not. Is that the Lorain Mining?

Q. It is here the Lorain Iron Mining Company. Is it a fact that there is a distinction between the Lorain Iron Mining Company and the Lorain Steel Company?

A. (No answer).

Q. Do you remember anything about any such lease as this, whether or not the Lorain Iron Mining Company is a subsidiary or not?

A. No, I do not.

Q. My informant has stated that the Lorain Iron Mining Company is a Steel Corporation concern?

A. I don't know about that.

Q. Assuming for the moment that it is, the Lorain Iron Mining Company is a subsidiary or was of the Steel Corporation, did you have before you any record of any such lease as this made to that company at that time?

A. I do not remember it, and I do not recollect of ever seeing a lease made at that price.

Q. If a lease of that sort was made at 75 cents a ton to one of your subsidiaries on 1,500,000 tonnage, would that in any way change your opinion which you have expressed as to fifty cents being a reasonable value of the ore?

A. It would not.

Q. Even though you paid 75 cents?

A. If we paid 75 cents there must have been some special reason for the same.

Q. Seventy-five cents for a mine that had not been opened and which was supposed to be non-Bessemer ore, wouldn't

that change your opinion the least bit in the world as to the value of the Hill ores being 50 cents?

A. Not a particle.

Q. Why not, on what ground do you reconcile those two apparently inconsistent facts?

A. It is no more inconsistent than the fact that we were able to lease from Mr. Walker immediately prior to signing the Hill lease for a large tonnage of ore equally as good as the Hill lease, and at that time Mr. Walker thought it was a very desirable bargain to make.

Q. In the same month of the same year that you paid 75 cents to somebody else, it looks a little bit to me as if you thought it was a good bargain, too; am I wrong in that assumption?

A. You are discussing a matter I am not familiar with.

Q. That is perfectly true. We will wait until we get the exact lease, until I get more details about it. I find also, Mr. Corey, on this statement which as I say I am not personally informed about, a memorandum given me by my informant, that on January 1, 1907, the same date, there was another lease made to the Lorain Iron Mining Company by the Onondaga Company and it is stated here that the Lorain Iron Mining Company was a Steel Corporation company, of ten million tons, running 99 years, at 75 cents per ton, that this mine included what is stated here to be a good grade of ore, a large part of which is Bessemer, and the mine has not yet been opened, but he, Mr. Hartley, the gentleman named here, thinks it will be a stripping proposition. Have you at the moment any recollection of having seen or heard of any such lease as this?

A. No.

Q. Now, if we may assume tentatively, subject to correction, that this Lorain Iron Mining Company is a Steel Company subsidiary, may I ask if the fact of such lease that has covered such a tonnage as that, covering mines that had not yet been opened, running 99 years, at 75 cents a ton, would in any way change the opinion which you previously expressed as to 50 cents being a reasonable value on the Hill ores?

A. No.

Q. You still feel that even though if you paid 75 cents if

this assumption is correct, if you paid 75 cents for this tonnage, that it was only worth 50 cents?

MR. DICKINSON: I object to that question because it assumes Mr. Corey agreed to pay it, when he states he does not know anything about it, and the cross examination is addressed to his opinion, and the question assumes that Mr. Corey had done two inconsistent things; it has not been shown Mr. Corey assented to that or thought it was reasonable—

MR. KELLOGG: I ask Mr. Corey to temporarily assume these things, but I will remodel the question in the effort to meet the objection.

By MR. KELLOGG:

Q. If it be a fact, which I will ask you to assume, Mr. Corey, that a subsidiary of the Steel Corporation in January 1907, made a lease of 10,000,000 tons of ore running 99 years at 75 cents a ton, would that fact in any degree tend to change the opinion which you previously expressed as to 50 cents being a reasonable value of ore?

A. No, I would say that price was too high also.

Q. This involves if it is too much, it is 25 cents a ton too high according to your estimate?

A. Yes, sir.

Q. Therefore, we find on 10,000,000 the trifle of two and a half million dollars is involved in this excess payment, don't we?

A. I would presume so.

Q. Am I wrong in thinking that it was not the habit of the Steel Corporation to throw away little items of two and a half million dollars in the purchase of ore or anything else; I am correct in repeating that was not its habit, am I not?

A. Certainly.

Q. Therefore, is it not a reasonable assumption, Mr. Corey, that if the Steel Corporation paid this price for that ore, it was because the ore was worth it or, in fact, probably worth more than that?

MR. DICKINSON: I object to that. That is a mere argument.

THE WITNESS: So do I.

By Mr. Kellogg:

Q. You see this is all a question of opinion. We are talking about hypotheses entirely, and I want to see how that strikes you.

A. You are talking about a lease that I do not admit the Steel Corporation or its subsidiary ever made, because I do not know that they did make it.

Q. I did not ask you that.

A. And then you are asking my own opinion.

Q. Yes.

A. (Continuing) Upon someone's making a lease on that basis.

Q. You see, for the moment, we have to assume, because we have not got the lease before us, and we have not got this other information; but, as I shall not have the pleasure of meeting you again, I should like to ask you to assume that for me, and answer whether, if that is true, it would in any way tend to change your opinion as to the value of that ore.

Mr. Dickinson: I except to that, because it is not shown what the iron contents of the ore embraced in those leases was, the amount of phosphorus or the kind of ore it was, what the distance was from transportation, whether it was a developed or an undeveloped mine, what was the character of the overburden, whether or not it was a deep mine, or one that could be taken out with steam shovels.

Mr. Kellogg: It has been stated that it was a good grade of ore, a large part of it Bessemer, and I think every one of Judge Dickinson's objections have been covered in my assumptions. Bessemer relates to the quantity of phosphorus that is in the ore, but not exclusively. "Good grade of ore" refers to a good grade of metallic content.

Mr. Colton: It might be located right in between mines in a section in which it would be very valuable to the Corporation.

Mr. Severance: Why should we spend time for you to debate with Mr. Kellogg on this?

Mr. Kellogg: I shall not take up a great deal of time with this question, but I do want to get a little light on it.

Mr. Severance: I am not objecting to your questions.

By Mr. Kellogg:

Q. I should like to ask you to answer that question, Mr. Corey.

A. I did answer the question.

Q. I did not catch it. Will you be so good as to repeat your answer?

(By request of the witness, the question referred to was repeated as follows):

"Q. You see, for the moment, we have to assume, because we have not got the lease before us, and we have not got this other information; but, as I shall not have the pleasure of meeting you again, I should like to ask you to assume that for me, and answer whether, if that is true, it would in any way tend to change your opinion as to the value of that ore."

The Witness: No; I would not change my opinion.

By Mr. Kellogg:

Q. I am told by the same informant—and I understand you have made a very careful examination of the records, Mr. Corey—that in 1909, two years after, one Rouchleau made a lease to the Oliver Iron Mining Company,—which I assume is certainly one of your subsidiaries?

A. It is.

Q. (Continuing) Of a quantity of ore estimated at 1,000,000 tons, non-Bessemer, running 55 per cent. metallic content, at 75 cents a ton, probably a stripping proposition; evidently the mine not opened. Do you know of any such lease as that made in 1909, two years after the Hill lease, while you were still president of the Corporation, I believe?

A. Yes; I think I recollect that lease.

Q. Did you pay more than that ore was worth for that lease?

A. I think we did, in my opinion.

Q. But you paid that price, did you not?

A. That is quite evident, from your figures there.

Q. I would like to call your attention to one or two other leases: First, I would like to ask you a question as to whether or not it is the fact that prices of ore—

MR. DICKINSON: I want to enter an objection to leases that were taken after the Hill lease and prices affected by the basis fixed by the Hill lease, as incompetent and irrelevant.

By MR. KELLOGG:

Q. Now let me ask you the general question, Mr. Corey, whether it is not the fact that, from the time of the formation of the Steel Corporation, in fact down to date, prices of ore have not increased—in the Mesabi Range. I will limit my question to the Mesabi.

A. You mean the prices or royalty?

Q. Yes; royalty or sale, as the case may be?

A. Yes. I would be of the opinion that they have materially increased.

Q. Yes; I thought so.

I want to ask you if you recall two leases made by one Hartley to the Oliver Iron Mining Company, one of the Steel Corporation subsidiaries, January 1, 1907, covering in one case a million and a half estimated tonnage and in another case 10,556,000 estimated tonnage, non-Bessemer, metallic content tested 57.85, at 75 cents a ton; that having been made before the Hill lease, but during your term of occupancy of the presidency of the Steel Corporation.

A. I do not remember that particular lease; no.

Q. If those leases had been made, they should be shown on the list that you have?

A. Yes.

Q. 10,000,000 tons, or, in fact, 12,000,000 tons is, while not equal to some of the largest tonnages not a negligible quantity of ore, is it?

A. I think there were some special reasons leading up to those Hartley leases.

Q. Are you able, now, to specify any of those special reasons?

A. No. I could not put it in evidence, because I am not certain.

Q. But it is a fact, is it not, according to your best recollection, that those Hartley leases were made at that time?

A. I knew, in a general way, that there were some leases made with Hartley, yes.

Q. And that 75 cents was paid?

A. If that is a matter of record, it must be true.

Q. You have no doubt about it at the moment, have you?

A. Not at all.

MR. DICKINSON: Are you testifying that you know it is true, Mr. Corey.

THE WITNESS: No.

MR. DICKINSON: You simply do not know that it is not?

THE WITNESS: I am just simply accepting it.

By MR. KELLOGG:

Q. Does your recollection disagree with the statements as I made them to you from this memorandum I have? If it does, I should be glad to know it.

MR. DICKINSON: I understood that he had no recollection about it.

MR. KELLOGG: I understood him to say that this was his general recollection. I want to get that straight.

By MR. KELLOGG:

Q. I want to ask if that is your recollection. Have you any recollection on the point of there being Hartley leases made?

A. Yes; but I do not recollect the price.

Q. You do not?

A. No.

Q. Are you now prepared to disagree with the information I have to the effect that 75 cents was paid?

A. I am not, no.

Q. Is it not a fact, Mr. Corey, that in the year 1906 there were several leases made—I have here a memorandum of at least two by the Hartleys, one to the New York State Steel Company, and another to the Republic Iron & Steel Company, on a 75 cent basis, covering ore which, according to my memorandum, is in one case 53.58 metallic content, and that 75 cents was paid?

MR. DICKINSON: I understand you are simply using that as a basis of inquiry, Mr. Kellogg. You are not offering that as substantive evidence of the facts, yet.

MR. KELLOGG: No. It is not my case. I am not offering the leases in evidence. When it comes to our side of the case—

MR. DICKINSON: We do not admit your statements there to be facts, that there were such leases.

MR. KELLOGG: I am simply asking the witness—

MR. DICKINSON: I understand.

MR. KELLOGG: I shall never testify in this case, Judge.

MR. DICKINSON: I understand. I did not want to leave any room for supposing, however, that we pass those things as correct statements, without question.

MR. KELLOGG: Not at all. I am a seeker for light.

(By request, the stenographer repeated the pending question as follows):

"Q. Is it not a fact, Mr. Corey, that in the year 1906, there were several leases made—I have here a memorandum of at least two—by the Hartleys, one to the New York State Steel Company, and another to the Republic Iron & Steel Company, on a 75 cent. basis, covering ore which, according to my memorandum, is in one case 53.58 metallic content, and that 75 cents was paid?"

THE WITNESS: I have no knowledge of those leases.

By MR. KELLOGG:

Q. And you had made no investigation at the time of the Hill leases as to what leases between other parties of this general nature had been made? Is that correct?

A. I would not state that, no.

Q. But you did not know of these leases, did you?

A. I do not recollect them today, no. I may have heard of them.

Q. Precisely.

Is it not a fact, according to your personal knowledge, that after the time of the Hill lease, prices rose as high as $1.25 and $1.35 a ton for ore, which in no case exceeded 59.50 metallic contents?

A. I do not know that to be a fact. I knew that prices advanced after the making of the Hill lease.

Q. Did you know, for instance, of a lease of a substantial quantity of ore, which my statement here shows to be 2,000,-

000 tons, made by one Allworth to Pickands, Mather & Company, in 1909, two years after, for $1.35 a ton?

A. No.

Q. Or a lease made by Whiteside Chisholm to one Coates, covering a much smaller quantity of ore in 1909, at $1.85?

A. No.

Q. Or a lease made by Fay to the New York State Steel Company, as far back as October, 1906, covering 3,200,000 tons at $1.00 royalty?

A. I do not.

Q. And that the metallic content of that ore is given here as 56.10, and it is stated to have been largely Bessemer, underground, fairly good mining conditions? You never had heard of those leases?

A. I never had.

Q. In giving your opinion as to the 50 cents valuation of the Hill ores, what elements did you have in consideration with regard to the Hill lease itself? What particular features of the Hill lease itself did you have in mind?

A. I do not understand the question.

Q. I will preface it by another, then: Did you, at that time, have a personal familiarity with the terms of the Hill lease? You know it is quite an extensive document,—a printed volume almost, in size. With its sub-leases, which make an appendix, it comprises roughly 1,000 printed pages. The lease itself comprises, if my recollection is correct, over 150 pages or 200 pages. Did you have personal knowledge of the terms of that lease?

A. Yes; I believe that I read the lease proper over once.

Q. In giving your estimate of 50 cents as being the reasonable royalty which should have been paid in respect of this ore, what if any terms and conditions,—"elements" I called them before,—of this particular lease did you have in mind?

MR. DICKINSON: I object to that, because I think counsel is in error in assuming that Mr. Corey testified that 50 cents was reasonable.

MR. KELLOGG: If he did not so testify, that is different.

MR. DICKINSON: I understood him to say——

MR. KELLOGG: It is very satisfactory to us.

MR. DICKINSON: I understood him to say that it should not be in excess of that.

MR. KELLOGG: That is not quite as satisfactory.

MR. DICKINSON: It is quite a different thing, however.

MR. KELLOGG: I admit that. We will assume that the excess is all that he will ever go to,—that the 50 cent limit is the only one he will give us.

By MR. KELLOGG:

Q. In stating that you did not think that ore ought to have been paid for in excess of 50 cents a ton, will you kindly tell me what terms and conditions or elements of the Hill lease you had in mind, if any?

A. I had in mind the value of the ore solely.

Q. Wholly irrespective of the particular terms of the Hill lease?

A. I really do not know what you are driving at.

Q. I did not realize that there was anything occult in my question, but I shall try to make it more clear. Perhaps I can show what I mean in this way:

Were you considering that the price of the ore which would have been gotten out of these Great Northern properties should be valued on just the same basis as if you had gone out anywhere and picked up a little bunch of 100,000 tons or 200,000 tons or 1,000,000 tons of ore in an isolated bunch, so to speak—that is not a very happy word? Were you, in other words, treating this particular Hill lease just as you would treat a small lease for a small quantity of ore?

A. No.

Q. What differences did you draw in your mind?

A. I was placing my valuations on the Hill ores as in comparison with the leases we had made with the Canisteo and the Walker people.

Q. Were there any other leases that you had in your mind?

A. No; I believe not.

Q. The Canisteo lease covered an estimated tonnage of how much?

A. I could not answer that offhand.

Q. Within what limits? You can give me, of course, some

general idea? What was the outside figure that could possibly have been involved there?

A. I will ask Mr. Severance. Do you know how much was in the Canisteo?

MR. SEVERANCE: I do not remember. Do you know, Mr. Reed?

MR. REED: I do not remember.

By MR. KELLOGG:

Q. I do not want to take up too much time. You have no recollection.

A. No.

Q. Was it large?

A. It was a very material amount, both in the Canisteo and Walker.

Q. Well, 1,000,000 tons or 2,000,000 tons or 5,000,000 tons or 10,000,000 tons or what?

A. I presume over 10,000,000 tons.

Q. Something like 10,000,000 tons approximately in the Canisteo? More than that? 15,000,000 tons? Give me the best estimate you can, approximately.

A. You are merely asking me to guess on these things, and I decline to guess.

Q. I do not want to ask you to guess, but I am just asking you to give me your best recollection, if you have any. If you have any recollection, we will take that. If you have no recollection, just say so.

A. I have no recollection, as I have been trying to tell you for some time.

Q. How about the date of that lease? What was that?

A. The date of the Canisteo was about 1905 or 1906.

Q. That was perhaps two years before the Hill lease, or only one year? Which is your recollection as to the date?

A. I decline to answer the question.

Q. Why do you decline to answer the question?

A. Simply because I am telling you from memory, and you keep on pressing me and harassing me on questions which I decline to answer.

Q. I am asking you simply this: Have you, now, any more

definite recollection than you have given me of the date of that lease? If you have, please let me have it. If you have not, please say so.

A. Certainly not. If I had, I would tell you.

Q. Why did you not say that before?

What is your best recollection, if any, of the quantity of ore which was covered by the other lease you mentioned—the Walker. Is that the name?

A. The Walker lease, yes.

Q. What is your best recollection as to the amount of ore covered by that? If you have no recollection, just say so.

A. I would say between 30,000,000 and 50,000,000 tons.

Q. What is your best recollection as to the date of that lease?

A. That was about six months to a year prior to the Hill lease.

Q. Have you, at the present moment, any recollection of any lease made by your companies, any of them, at or about the time of the Hill leases?

A. No.

Q. Precisely. Now then, if I understood you correctly,—and if not, you will kindly correct me—in saying that you thought that 50 cents a ton was the outside figure that should have been paid for the Hill ores, you were simply taking the Hill lease as a case similar in its general, substantial respects, to those two leases you have just mentioned, and because you paid less on those two leases, you gave it as your opinion that more ought not to have been paid on this lease? Is that correct?

A. Yes; I think we might assume that that was correct.

Q. And that is your basis of comparison?

A. Yes.

Q. So far as the negotiation of the Hill lease is concerned, Mr. Corey, did that fall within your personal charge? If not, who had charge of it?

A. The details and examinations were conducted by the officers of the Oliver Iron Mining Company.

Q. The examinations of the property?

A. Yes.

Q. I was speaking of the negotiations with whoever represented the Great Northern interests.

A. I was not present at the negotiations.

Q. Am I correct in thinking that Judge Gary had personal and exclusive charge of those negotiations, and that they were conducted with Mr. James J. Hill personally, if you know?

A. I believe that Mr. Frick was present at some of the negotiations.

Q. So far as you were concerned, you had nothing to do with those negotiations.

A. I had nothing to do with those negotiations.

Q. At the present moment, Mr. Corey, have you in mind the principal terms or conditions of the Great Northern lease?

A. I have not.

Q. You have assumed, in making your answers on direct examination and on cross examination, that they were substantially the same as the Canisteo and the Walker lease that you have mentioned?

A. I do not remember whether they were materially different or not.

Q. May I call your attention to one or two specific points, which I shall not occupy long in doing? Is it not a fact that this Great Northern lease was supposed, at the time it was made, to embrace a tonnage estimated at about 250,000,000 or more?

A. Yes.

Q. Is it not a fact that this tonnage was contained in various groups or bodies of ore in the Mesabi district at different places?

A. The western end of the Mesabi.

Q. The western end of the Mesabi Range?

A. Yes.

Q. Is it not a fact that the terms of the lease were such that the Steel Corporation or its subsidiary company had the right to thoroughly explore the whole region containing this two hundred and fifty million odd tons during the period of the lease?

A. Yes.

Q. Is it not a fact that, after having so explored, the Steel

Corporation had the right to select the place or the places at which excavations would be cheapest, the ore best and driest, and transportation most convenient, and to confine its operations so far as the minimums were concerned, to those places thus selected?

A. That is my recollection.

Q. In other words, this Hill lease gave you a call on the best ore contained in 250,000,000 tons located at various spots of the western end of the Mesabi Range? By "call" I mean the right to select and take the best there was from this ore in this general district.

A. They had the right to select the points of location, yes.

Q. And to confine their efforts, their mining, to such points as seemed to them best adapted for economy and other purposes?

A. I do not like the way you state that, Mr. Kellogg.

Q. Will you be so good as to correct me, if I am wrong? I do not intend to be wrong, I don't think I am. Please point out where you think I am wrong.

A. What was the length of time the lease was to obtain?

Q. Fifty years with a right of cancellation in eight years; don't you know that?

A. Yes.

Q. Why did you ask me that question, Mr. Corey?

A. And what was—

Q. Pardon me, why did you, the President of the Steel Corporation, have to ask me who have only known of this case comparatively a few months a question like that about the Hill lease?

A. I thought you were very familiar with it from the questions you asked me.

Q. Didn't you know it was a fifty year lease, as you answered questions on the direct examination, with a right to cancellation at the end of eight years?

A. Certainly.

Q. Then why did you ask me that question?

A. Do you object to answering it?

Q. Not the least in the world, but I want to know why you had to ask me. Why did you have to ask that question; was

it that you had forgotten completely in your testimony today the essential terms of the duration of the Hill lease?

A. No, I wanted to see if you knew.

Q. Have I qualified to your entire satisfaction as an expert on the Hill lease?

A. To a certain degree, yes sir.

Q. I am very pleased indeed to learn it. You said a moment ago that you objected to the way I stated the general provisions of the Hill lease as to the right to mine this ore?

A. Yes.

Q. Would you mind stating in what respect if any I have misstated the privileges given by the Hill lease?

A. No, I believe you have not misstated it.

Q. What else do you want to add to that?

A. I want to add this, that the Steel Corporation or its subsidiary the Oliver Mining Company, had the right to select the point of location for opening up mines, but as this lease obtained for a period of fifty years, in all probability it would be necessary to mine the poorer grade of ore as well as the better grade, and to operate in view of the best economy—it is necessary to take out the poorer grades of ore with the rich.

Q. So that if the Steel Corporation expected to carry out the contract of the lease and mine ore for fifty years, it would be neither possible nor practicable to select the locations and mine the richest and best ores and leave the other ore in the ground; that is the only point, that is if the lease ran fifty years?

A. If the lease ran fifty years.

Q. As a matter of fact, there was a provision of course authorizing cancellation at the end of eight years?

A. Yes.

Q. Is it not a fact that the Steel Corporation has done during that eight years exactly what you just said it would be impracticable for them to do, that they had selected rich ores, the best located, most concentrated locations, and have confined their efforts to those particular ores and left the rest, isn't that a fact?

A. I believe that it is.

Q. In other words, the impracticable and impossible has actually been done in this particular case. Will you kindly tell me why it is not also a fact that—of course it is a matter of public record—that this lease was cancelled in time for the termination of it on January 1, 1915; I suppose that is on record, that it has been cancelled.

MR. DICKINSON: I object to it on the ground that it is secondary evidence, if there is any written cancellation, and our understanding is that the cancellation was not final as to all the property, but that there were re-leases for taking over some of the property—

MR. SEVERANCE: Oh, no.

MR. KELLOGG: That is a matter of record and the record is the best evidence.

MR. SEVERANCE: The lease is cancelled on all the property except that which is being actually surrendered.

THE WITNESS: It has.

MR. COLTON: The papers I had in regard to that said there was then pending a contract, one that was not in my possession, an informal contract relating to the properties; I have never seen that informal contract, and until I have seen it I certainly with Judge Dickinson wish to object until we see it.

MR. SEVERANCE: We will give you the contract; I think I can give them all to you.

MR. KELLOGG: You shall have them.

By MR. KELLOGG:

Q. Now, Mr. Corey, just a few more questions on this line; isn't it a fact in your opinion that a lease covering such a quantity of ore as this is located at various places and giving such privileges as this Hill lease gave, was a somewhat different lease from the Walker or Canisteo lease as you treat the terms of those leases?

A. No, I cannot see any difference.

Q. You cannot see that they give any greater privileges or greater value than those two leases?

A. I do not.

Q. Will you tell me what the provisions of the Canisteo leases were, the substantial provisions, not the details, how it

compared with the Hill lease; was there a cancellation clause in that lease?

A. No.

Q. How long did that lease run?

A. I do not recollect now the length of time.

Q. A substantial time?

A. A substantial time; the royalties were reasonable and the minimums were reasonable.

Q. But you had no right to get out of it at any time if you wanted to, or not earlier than the termination of the lease?

A. No, I would not state that; I believe that the Canisteo lease could be thrown up.

Q. You have I suppose no copy of that?

A. I have not; and I have not looked at them for three or four years.

Q. With regard to the Walker lease how did its terms compare with the Hill lease, if you remember?

A. My recollection is that the royalty was fair and the minimums reasonable.

Q. I am talking about the terms of the lease; did you have the right or the opportunity to select there any such quantity of ore in the Walker lease that you had the right to select there under the Great Northern lease?

A. No, I would say not.

Q. Did you have any such choice, any such range of choice among the ores covered by the Walker lease as was given by the 250,000,000 tons under the Hill lease?

A. The range would not be as good, no.

Q. Is not the question of having a wider range and a wider opportunity of selection both as to quality and location of ores of some value?

A. I do not see any material difference.

Q. You are quite clear as to that, are you, that you see no material difference between a lease of a quantity of 15,000,000 which gives you no privilege of selection as compared with a call on ore of 250,000,000 tons for a period of eight years; do you wish to put that upon the record?

A. I certainly have no objection to it.

Q. And the same is true as to any other quantity of ore

whatsoever as compared with 250,000,000 tons with the privilege that the Hill lease gives?

A. That question is ridiculous and I decline to answer it.

Q. Why do you decline to answer, because it is ridiculous?

A. Yes.

Q. Can't you answer it?

A. Certainly I can.

Q. Then please answer it and let the court judge the ridiculousness of it.

A. Judge, I contend that the question is ridiculous with any other amount of ore you might say from one ton up to ten or a hundred tons of ore.

Q. Where do you draw the line?

A. I draw the line between a material body of ore and an amount that would be in my opinion ridiculous.

Q. Do you for instance think and wish to be understood as saying that there is no material distinction between a lease we will say covering 10,000,000 tons and a lease which gives you a right of selection from 250,000,000 tons, good for eight years; that no additional element of value should be considered as belonging to the latter lease?

MR. DICKINSON: I object to that; that is a different question from the one put to the witness before.

THE WITNESS: No, I do not care to answer any such line of questions at all.

By MR. KELLOGG:

Q. You refuse to answer the question?

A. You can put it down that the witness refuses to answer.

Q. The witness refuses to answer? A. Yes.

MR. DICKINSON: Will you repeat the question, please.

(The stenographer thereupon read the question as follows):

"Q. Do you for instance think and wish to be understood as saying that there is no material distinction between a lease covering, we will say, 10,000,000 tons and a lease which gives you a right of selection from 250,000,000 tons, good for eigh-

years; that no additional element of value should be considered as belonging to the latter lease?"

By Mr. Dickinson:

Q. Have you any opinion on that, Mr. Corey, that would enable you to answer that?

A. No, I would prefer not to answer it.

Mr. Dickinson: I think it is proper for you to do it if you can do it.

Mr. Colton: I agree with Judge Dickinson.

By Mr. Kellogg:

Q. With the solicitations of both counsel you still refuse to answer that question? I am very much interested. I ask you if you still refuse to answer that question when both counsel for the Government and myself join in the request that you do so.

A. I have answered—

Mr. Dickinson: Mr. Corey, of course I have no right to direct you to answer any question. I am not your counsel, but there is no Judge here who can rule on these questions and I would suggest the propriety of your answering it the best that you can.

The Witness: I accept your suggestion. Read the question.

(The stenographer thereupon repeated the question as follows):

"Q. Do you for instance, think and wish to be understood as saying that there is no material distinction between a lease covering, we will say, 10,000,000 tons and a lease which gives you the right of selection from 250,000,000 tons good for eight years; that no additional element of value should be considered as belonging to the latter lease."

The Witness: I would state that I consider that there is no material difference.

By Mr. Kellogg:

Q. And you wish to have that as your last word on the subject, do you?

MR. DICKINSON: I guess it will be his last word unless you ask him some more questions.

THE WITNESS: If you will allow me to make that the last.

By MR. KELLOGG:

Q. I will ask you to answer the question.

MR. DICKINSON: You won't allow him to have the last word.

By MR. KELLOGG:

Q. Do you wish to have that go on the record as your final opinion upon that subject?

A. I have answered the question, I believe, once before.

Q. That there is no material difference?

A. I answered it once before, and along the same line of reasoning.

Q. That there is no material difference between those two leases that I have assumed, is that correct?

A. I believe my answer—I have answered the question.

Q. Just say yes or no, so we will have no doubt about it; you wish to be understood that there is no material difference in your opinion between the two leases that I have assumed in my question so far as the value is concerned. I want to know seriously is it so hard for you to say yes or no to that question that renders it necessary—just answer that, please. We want to go home, and we want your final last word on the subject, either yes or no.

A. I would state that I consider that there is no material difference.

Whereupon, at 4:10 P. M. an adjournment was taken until Monday, January 27th, 1913, at 10:30 o'clock A. M. at 71 Broadway, New York.

FORTIETH DAY.

EMPIRE BUILDING, 71 Broadway,
NEW YORK CITY,

Monday, January 27, 1913.

Before SPECIAL EXAMINER JOHN ARTHUR BROWN:

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED; also on behalf of the Great Northern Iron Ore Interests, MR. FREDERICK R. KELLOGG and MR. CHESTER W. CUTHELL.

WILLIAM E. COREY,

a witness called on behalf of the United States, having been previously sworn, testified further as follows:

RE-DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Corey, you were questioned, at page 5754 in regard to some differences between you and Judge Gary as to your retirement from the presidency, and also as to whether or not your feelings were as cordial at that period toward Judge Gary as they had been.

I will ask you whether or not you are pecuniarily interested in the United States Steel Corporation, and if, considering what you have in other things, this is a large or small comparative interest.

MR. SEVERANCE: I object to that as indefinite, and asking a conclusion of the witness as to the relative importance of things. You have already proved by Mr. Corey, on his direct examination, that he is a stockholder and a director. He testified to that in answer to your questions. If you want to ask him how much stock he has got, that is another matter.

MR. DICKINSON: I do not care to ask him that.

MR. SEVERANCE: He has already testified, on direct examination, that he was a director and that he was a stockholder. You asked him those two questions. Now, as to whether he has a lot of money in other things and less money in this, or a large amount of money in this and less in others, is—

MR. DICKINSON: What I want to show is whether Mr. Corey is pecuniarily interested as a stockholder in the United States Steel Corporation and whether it is, for him, a large or a small interest.

By MR. DICKINSON:

Q. Will you answer that question in your own way, Mr. Corey?

MR. SEVERANCE: One moment. I wish my objection to go to the latter part of the question. The witness has already stated that he is a stockholder. What he might denominate large other people might think small, although I think probably the reverse would be true; what would be small to him would be large to most of us.

THE WITNESS: About one-fourth of my fortune is in securities of the Steel Corporation.

By MR. DICKINSON:

Q. In "securities" you include stock?

A. Stocks and bonds.

Q. Mr. Corey, state whether or not your personal feelings are favorable or unfavorable to the success of the Government in this dissolution suit that it has brought against the United States Steel Corporation and its subsidiaries.

MR. SEVERANCE: I object to that as incompetent and irrelevant.

THE WITNESS: As I am particularly interested in the securities of the Steel Corporation, I am, naturally, favorable to the Steel Corporation.

By MR. DICKINSON:

Q. Will you answer the question a little more directly, Mr. Corey, and state whether you are sympathetic or opposed to the success of the Government in this case?

MR. SEVERANCE: The same objection.

THE WITNESS: I am opposed to the Government in this case.

By MR. DICKINSON:

Q. State whether or not, Mr. Corey, when the United States Steel Corporation was formed in April, 1901, the National Steel Company, the Federal Steel Company and the Carnegie Steel Company were competitors in Interstate commerce.

MR. SEVERANCE: That is not re-direct. I asked him nothing that could possibly give rise to such a question on re-direct examination. I do not suppose that makes much difference, but it is a fact.

By MR. DICKINSON:

Q. You asked whether the Illinois could get into certain territory. The question was:

"I understand that, but the Illinois did not get into that territory to any extent as against the Carnegie Company or the Lackawanna or the Cambria or the Pennsylvania."

The question is now, whether, at the time of the formation of the United States Steel Corporation, the National Steel Company, the Federal Steel Company and the Carnegie Company were competitors in interstate commerce.

A. I would like to have the question read again.

(By request, the stenographer repeated the pending question as follows:)

"Q. State whether or not, Mr. Corey, when the United States Steel Corporation was formed in April, 1901, the National Steel Company, the Federal Steel Company and the Carnegie Steel Company were competitors in interstate commerce."

THE WITNESS: Yes.

By MR. DICKINSON:

Q. You were asked, on page 5663 as follows:

"Now it is a fact from the time that pool was broken up in 1904 or 1905, as you have stated, while the different rail

makers may have come together and had a conference or conferences, with the executive officers of the railroads, there was never any agreement entered into between the rail makers from 1904 or 1905 on, either to advance, reduce or maintain prices. Is that not true?"

And your answer was "That is true."

In that connection what do you mean in your answer to cover by the expression "any agreement."

A. Just as I stated; there was no agreement as to prices.

Q. Was there or not an understanding at the time, each with the other, that a price announced would be maintained by the persons so announcing, and did or did not those who were there rely mutually upon such prices being maintained according to that announcement?

MR. SEVERANCE: I object to that as incompetent. Mr. Corey cannot possibly know what was in the minds of the other gentlemen or whether they relied on what was said, or whether they did not rely upon what was said. He can properly state as to what he intended to do as to any prices that he named; but he cannot possibly know as to whether other gentlemen intended to maintain the prices that they named. As a matter of fact the witness has stated on cross-examination, with reference to conferences that were held, that the prices named by gentlemen were not maintained. Therefore it is incompetent to ask him to testify as to what was in the minds of other people or what they intended to do. He could not know that.

MR. DICKINSON: Well, we shall see.

MR. SEVERANCE: Yes; we shall see.

(By request, the stenographer repeated the pending question as follows:)

"Q. Was there or not an understanding at the time, each with the other, that a price announced would be maintained by the persons so announcing, and did or did not those who were there rely mutually upon such prices being maintained according to that announcement?"

MR. DICKINSON: For the present I will withdraw that question, and ask Mr. Corey this:

By MR. DICKINSON:

Q. What was the object of those meetings, Mr. Corey? Why did they come together and talk about prices?

A. I do not know that I have admitted that they did come together and talk about prices.

MR. SEVERANCE: Mr. Corey is quite correct. He never testified that the rail makers came together and talked about prices.

By MR. DICKINSON:

Q. You are referring to the rail pool, there?

A. That was your question, as I understood it.

Q. Yes; that is true, that refers to rails.

A. I object to the term "rail pool." There was no rail pool at that time.

Q. You were asked about the attitude of the United States Steel Corporation in opposing the raising of the price of rails above $28.00 a ton when other of the rail makers at that time were advocating it. Did this attitude of the United States Steel Corporation prevent the raising of the price of rails at those periods to which you refer above $28.00?

A. What period was that, to which you refer?

Q. The question that was asked you was this, on page 5663 of the record:

"Is it not a fact that in some of those conferences after the pool was broken up, some of the outside manufacturers—by that I mean rail makers other than those belonging to the United States Steel Corporation—wanted to raise the price of steel rails, and the Corporation declined to raise its price? Do you not know that?" And the answer was: "Yes; I have heard suggestions from some of the other rail makers to that effect."

MR. SEVERANCE: Judge Dickinson, pardon me, but in fairness to the witness I think you should read his answer at the top of the next page, in that connection.

MR. DICKINSON: I will pursue my own examination. If I am unfair to the witness, the court will have to judge of that.

MR. SEVERANCE: Very well. I will insert my objection——

MR. DICKINSON: I cannot be directed in my examination of the witness in that way.

MR. SEVERANCE: All right.

MR. DICKINSON: I do not mean to be unfair to the witness, and I certainly do not mean to trap the witness into any statement.

MR. SEVERANCE: Have you finished?

MR. DICKINSON: Yes.

MR. SEVERANCE: I would like to insert an objection. I object to the question as unfair to the witness, and unless there is also inserted in it, or unless his attention is called to the fact that, on the next page, page 5664 of the record, in response to a question as to whether he was present at any conference at which the suggestion was made by the other rail makers and by the other rail manufacturers that the price ought to be raised, the witness said: "I am not prepared to state definitely that I was, but I recollect that it may not have been at a conference; it may have only been between individuals; but on several occasions other rail manufacturers have said to me that they thought the price of rails was too low and should be advanced; but I would not state that it was at a conference."

I think, in fairness, that should be inserted in the question.

By MR. DICKINSON:

Q. Mr. Corey, did or did not the attitude of the United States Steel Corporation prevent, at any time, the raising of the price of rails above $28.00, when that raise was suggested at a conference, or outside of a conference to any officer or officers of the United States Steel Corporation?

A. As the price was not raised, it may have been due to the influence of the officials of the Steel Corporation that the price was not raised.

Q. I will ask you whether or not their influence was directed in that way, whatever the effect may have been.

A. Yes; I was opposed to advancing the price of rails.

Q. Why were you opposed, Mr. Corey, to raising the price?

A. I felt that $28.00 was a fair price for steel rails, and that if the price was fair, we should not advance it.

Q. Mr. Corey, could or could not the Steel Corporation make rails cheaper than its competitors?

MR. SEVERANCE: I object to that, as it does not appear by the testimony—not questioning Mr. Corey's capacity as a rail manufacturer—that he was familiar with the plants of the competitors of the Corporation.

MR. DICKINSON: I thought that was one of the boasts of the combination—a decrease in the cost of production.

MR. SEVERANCE: It undoubtedly did decrease the cost of production.

MR. DICKINSON: As compared with smaller plants.

MR. COLTON: Below $12 a ton?

(By request of the witness, the stenographer repeated the pending question as follows:)

"Q. Mr. Corey, could or could not the Steel Corporation make rails cheaper than its competitors?"

THE WITNESS: In my opinion they could.

By MR. DICKINSON:

Q. Mr. Corey, do you recall for how long a period the price of rails ruled at $28 a ton, approximately?

A. I do not; but for a long time.

Q. During that period, was there any fluctuation in the cost of pig iron and the market price of pig iron?

A. I do not recall specifically, but I would judge that there was.

Q. Were these fluctuations at times wide, in the prices of pig iron, during that period?

MR. SEVERANCE: I object to that as asking for a conclusion. He should be properly asked what the differences were, rather than to characterize them.

THE WITNESS: It is very difficult for me to answer what occurred over a period of ten or fifteen years, and state figures; very difficult. I do not believe I am qualified to answer that question.

By MR. DICKINSON:

Q. Whatever it may have been, such fluctuations did not change the price of rails during that period, did they?

A. They did not.

Q. On page 5664 you were asked this question, and gave the following answer:

"Q. It is a fact, is it not, Mr. Corey, that at various times, and even at the present time, the price of steel rails in foreign countries has been and is now higher than in the United States?" And you answered "Yes."

Were these higher prices at such times as they existed affected by the rail pool that had been entered into between the makers of rails in this country and the makers of rails in foreign countries?

Mr. Severance: It does not appear by the testimony of the witness that he has any personal information as to a rail pool, and I object to the question as incompetent. He has not stated that it was a pool; but simply an arrangement with reference to the trade in neutral markets; so that the question is hardly a fair one to the witness in view of his previous testimony.

The Witness: Any answer that I might make to that would only be an opinion or a hazard.

By Mr. Dickinson:

Q. Mr. Corey, you were president, were you not, of the largest producer of iron and steel products in the world?

A. Yes.

Q. You had been for a long time previous to that connected, part of the time as an operator and part of the time as a director, with what was one of the largest producers of iron and steel products in the world before the formation of the United States Steel Corporation? I mean the Carnegie Company.

A. It was the largest. I had a little pride in that.

Q. Your experience in the iron and steel business extends over the larger part of your active life, business life, does it?

A. Yes.

Q. State whether or not, as President of the United States Steel Corporation, it was a part of your duties, in the discharge of your duties to your company, to inform yourself as to the markets not only in this country but generally in respect to iron and steel products, and as to the conditions that affected them from time to time?

A. Yes.

Q. Now I will ask you, based upon that experience and knowledge and study of that business, whether or not in your opinion the formation of a rail pool or understanding or agreement between makers of rails in the United States and in foreign countries would have tended to raise the prices of rails at times in foreign countries.

MR. SEVERANCE: I object to that as incompetent, and as asking for expert testimony upon a subject that is not susceptible of that sort of evidence, and also on the ground that it appears by testimony heretofore given by the witness that the tariffs of different countries were very effective in preventing producers in one country from entering into another. I am not quoting accurately in language the statement of the witness. I object further on the ground that the witness has not stated that there was a pool, as the word is understood and has been defined in his testimony, and also as incompetent and immaterial. And the witness has further stated that the foreign business of the company was in the hands of Mr. Farrell.

MR. DICKINSON: The question is hypothetical, so far as the pool arrangement is concerned.

By MR. DICKINSON:

Q. But I will ask you whether or not it was the business of Mr. Farrell to report to you and keep you informed as to the foreign conditions affecting the business of the United States Steel Corporation.

A. He did, from time to time.

MR. DICKINSON: Now repeat the question and I will ask you for an answer.

(By request, the stenographer repeated the question as follows:)

"Q. Now I will ask you, based upon that experience and knowledge and study of that business, whether or not in your opinion the formation of a rail pool or understanding or agreement between makers of rails in the United States and in foreign countries would have tended to raise the prices of rails at times in foreign countries."

MR. SEVERANCE: I make the further general objection to the one I made before, that it is not founded upon any evidence in the record.

By MR. DICKINSON:

Q. Now Mr. Corey, will you please answer that?

A. I cannot state positively that it did, but it would probably have that effect.

Q. Are pools made generally to lower prices or maintain prices?

MR. SEVERANCE: I object to that as irrelevant and immaterial.

By MR. DICKINSON:

Q. What is the object generally of competitors forming pools?

A. I have never admitted, Judge, that there was a pool.

Q. On rails?

A. That there was an international pool on rails.

Q. I am not asking you that.

MR. SEVERANCE: I want to be sure that that language went into the record correctly. Will you read it.

(By request, the stenographer repeated the answer as follows:)

"A. That there was an international pool on rails."

MR. SEVERANCE: That is, you mean you never admitted that there was an international pool on rails?

THE WITNESS: No, sir.

By MR. DICKINSON:

Q. Have you ever denied it?

A. No.

Q. Now I will ask you to answer my other question. Read it to him, please, as to the object of the formation of pools. That is not based on any assumption that there is any foreign rail pool.

(By request, the stenographer repeated two questions as follows:)

"Q. Are pools made generally to lower prices or maintain prices?" and

"Q. What is the object generally of competitors forming pools?"

MR. SEVERANCE: Let us get the question straight. Which one is it?

MR. DICKINSON: Let us have the first one.

Q. Are pools made generally to lower prices or maintain prices?

MR. LINDABURY: Is this asked of him as an expert on pools? I would object, because the witness has not been shown to be an expert on pools.

By MR. DICKINSON:

Q. Will you answer the question?

A. I have known associations to maintain at times the price, to advance the price at times, and to lower the price at times.

Q. State whether or not the general purpose of pools is to increase competition between competitors who enter into them.

MR. SEVERANCE: I will make the same objection that Mr. Lindabury made, and as irrelevant.

THE WITNESS: I do not understand the question. Will you read it, please?

(The stenographer repeated the question as follows:)

"Q. State whether or not the general purpose of pools is to increase competition between competitors who enter into them."

THE WITNESS: I would not state that it is not the intention to increase competition. In that connection I would like to say, Judge Dickinson, that practically every question that you have asked me is from information found in the minutes of the Carnegie Steel Company. You have those records. Why depend upon my memory to answer these questions when you can find the answer in those same records? That is enough.

By MR. DICKINSON:

Q. I will go back to the Carnegie minutes, and read to you from page 1090, as follows:

"At a meeting of the Board of Managers of the Carnegie Steel Company, Limited, held at the general offices of the association, Carnegie Building, Pittsburgh, Pa., at 12:30 P. M. on Tuesday, September 14th, 1897, there were present MM. Schwab (President), Curry, Peacock, Phipps, Wightman and Lovejoy (Secretary); also MM. Thomas Morrison, D. M. Clemson and George E. McCague. (Mr. Frick in the East; Mr. Singer abroad; Mr. Pontefract ill.)

* * *

"The President submitted his usual monthly report as to the operations at the works for the month of August as follows:

* * *

"'Edgar Thomson Steel Works produced during the month 52,662 tons of Ingots, and 45,153 tons of Rails. The cost of manufacture was the lowest yet obtained, being $4.73 from Pig to Rails."

* * *

"'Duquesne Steel Works. These works produced during the month 36,355 tons of Ingots; 20,816 tons of Billets, and 9,274 tons of Rails. Cost of manufacturing from Pig Iron to Billets was the lowest ever obtained, being $3.55 from Pig to Billets, or 23c. per ton less than the lowest cost ever obtained at these Works. It is now believed by the Superintendent at these Works that with his new Blowing arrangements completed and some other changes of minor character, which he is now making, that he can ultimately reduce this cost to about $3.25 from Pig Iron to Billets. With Pig at $9.25, which was the cost of production last month, would give us very cheap billets. I think, generally considered, the practice at the Duquesne Works for the past month was the best we have ever had.

"'Appended, please find a comparative statement of cost of manufacturing rails between Edgar Thomson and Duquesne.

"'Lucy Furnaces produced during the month 19,312 tons of Pig Iron at practically the same cost as preceding months. Note the comparative statement appended.

"'Upper Union Mills made during the month 17,500 tons of Finished Material, being the largest month ever obtained at these Works. Costs were lower in nearly every department than any previous month.

"'Lower Union Mills shows an excellent reduction and especially in the cost of Sheared Plates. Although these works have operated in a very satisfactory manner, it is believed that when labor is properly adjusted, and on a basis with similar mills throughout the district, that their cost will be materially reduced.

EDGAR THOMSON AND DUQUESNE RAIL MILLS.

COST OF MANUFACTURE.

	Edgar Thomson	Duquesne
Loss	1.13	1.33
Repairs	.64	.58
Labor	1.57	1.56
Expenses	1.39	1.42
	4.73	4.89

FURNACE STATEMENT.

	Edgar Thomson	Lucy	Duquesne
Labor	.84	.78	.71
Repairs	.11	.20	.14
Supplies	.14	.20	.16
	1.09	1.18	1.01"

The record here states the manufacture at the Edgar Thomson Steel Works was $4.73 from pig to rails at that time. Was that ever reduced after that?

A. What year was that?

Q. This was in 1897.

A. That was a very low cost, and I doubt if it ever was materially reduced.

Q. Well, now, under the Duquesne Steel Works it says "with pig at $9.25, which was the cost of production last

month, would give us very cheap billets." Was the cost of pig iron ever reduced below $9.25?

A. At certain plants it was.

Q. After the formation of the United States Steel Corporation state whether the cost of production at the Carnegie Works was materially less than it was at the time that it was acquired by the United States Steel Corporation.

MR. SEVERANCE: Your question now, as I understand it, has no relevancy to the cost in 1897 concerning which you have read?

MR. DICKINSON: No.

MR. SEVERANCE: You want to know whether it was reduced from April, 1901, on?

MR. DICKINSON: I want to know whether after April, 1901, on, the Carnegie Company was operating——

MR. SEVERANCE: More economically?

MR. DICKINSON: ——at a lower cost, in obtaining the products, than it had been before, materially less.

MR. SEVERANCE: You mean, then, before when?

MR. DICKINSON: Well, I will say at the time it was acquired, or a year or two next preceding.

THE WITNESS: That question is perfectly clear. It said at the time it was acquired.

By MR. DICKINSON:

Q. Well, take it back for a year or two preceding.

A. I would prefer to answer the question the way it was put.

Q. Answer it that way, and then you can answer another way.

A. Am I never going to get through?

Q. I hope so.

A. I would say that the costs were not materially reduced in the Carnegie Steel Company, for the reason that at the time of the acquisition of the Carnegie Steel Company in April, 1901, we considered that the plans were in first-class condition.

Q. You were asked about the invasion of England in sending steel rails by the United States Steel Corporation, and you have also stated,—although you have not admitted as you have stated, that there was a foreign rail pool,—that there was some understanding or some arrangement, as I understood you, between the American makers of rails and foreign makers of rails. Now, whatever that arrangement or understanding may have been, state whether or not this invasion was before or after that took place.

MR. SEVERANCE: I object to that question, as it is founded upon a statement in the record which the witness on cross-examination stated was incorrectly reported in the record, where the record on direct examination stated—the question was, was that the understanding, and the witness said he did not mean to so testify.

By MR. DICKINSON:

Q. I will read the record, page 5670. You were also asked, Mr. Corey—and I quote this from page 5519—"you have stated, Mr. Corey, that under this, the United States Steel Corporation was not to sell and did not sell in countries abroad where steel rails were being manufactured. State whether or not, under this arrangement, the manufacturers of these other countries refrained from selling in the United States," and your answer was "That was the understanding."

You went on further——

MR. SEVERANCE: That is what I quoted in my question.

By MR. DICKINSON:

Q. And you answered "That is a mistake, because my intention was to say that that was my understanding." You did say that?

A. Yes.

Q. Now, then, I will change that question and make it read as follows: State whether or not this invasion of England by the United States Steel Corporation in selling rails was before or after the time that you reached an understanding that there was some arrangement between the manufacturers of rails in this country and foreign countries.

A. The question is not clear to me.

(The question was repeated by the stenographer as follows:)

"Q. State whether or not this invasion of England by the United States Steel Corporation in selling rails was before or after the time that you reached an understanding that there was some arrangement between the manufacturers of rails in this country and foreign countries."

By MR. DICKINSON:

Q. Don't you understand that question? If not, I will try to make it clearer?

A. I think I understand what you mean.

Q. Did you personally reach the understanding from what Mr. Farrell reported to you that there had been some kind of an arrangement entered into between the manufacturers of rails in this country and foreign countries?

MR. SEVERANCE: I object to that as incompetent and hearsay, and asking for an opinion.

THE WITNESS: I have answered it there and I will answer it again. That was my understanding.

By MR. DICKINSON:

Q. You have spoken of the invasion of the United States Steel Corporation in the sale of rails, have you not?

A. Yes.

Q. Was that invasion before or after the time when you got this understanding that we have just referred to?

A. I can not recall the date or the exact period.

Q. What is your best recollection on that?

A. Have you no records?

Q. I have none at all.

MR. COLTON: We called for the records in regard to that the other day.

MR. SEVERANCE: You can easily call for records that do not exist, for the sake of making a record yourself.

MR. DICKINSON: It is not so easy to get some of them. We have been trying to get some for quite a while and have not been able to.

THE WITNESS: I would not be positive, but I would presume it was before that, prior to that time.

By MR. DICKINSON:

Q. Do you recall any such invasion after that date?

A. That is just the same kind of question, Judge. I have not stated positively that it was prior to that.

Q. I understand.

A. I felt that it was prior.

Q. I ask you whether you can positively recall any such invasion after that date.

MR. SEVERANCE: I object to any further cross examination by counsel of his own witness. The witness has stated over and over again that he will not undertake to fix the time, and he should not be asked further to speculate about it on re-direct examination, I think. That is hardly the proper way to examine one's own witness.

THE WITNESS: Do you insist upon an answer?

By MR. DICKINSON:

Q. To the best of your recollection, Mr. Corey.

A. I do not recall.

Q. Do you recall any invasion of this country after the time that you got that understanding by English makers of steel rails, and if so, when?

MR. LINDABURY: I object to that. He has already testified.

MR. SEVERANCE: I make the same objection.

Is your question addressed to foreign manufacturers or only English?

MR. DICKINSON: English.

(By request, the stenographer repeated the pending question.)

THE WITNESS: It is impossible, absolutely, for me to answer that question, for the reason that, at times, rails were sold on the Western Coast by foreign manufacturers and I cannot state specifically whether rails were sold by any foreign manufacturers for the period referred to.

By Mr. Dickinson:

Q. Please state how and from whom you got that understanding to which we have referred?

A. As mentioned in the previous testimony, I believe I stated I gained that information through Mr. Farrell.

Mr. Dickinson: Just here, Mr. Severance, I call your attention to our request for the telegram. You said you would endeavor to find it. Has a search been made for it?

Mr. Severance: I do not know whether it has or not.

Mr. Dickinson: We wanted to ask Mr. Corey about it.

Mr. Colton: We want the whole correspondence; not just the one telegram.

Mr. Severance: Mr. Bolling generally looks after those things. He is not here at the moment. I will inquire later.

Mr. Dickinson: We would like to get such information as you have on that.

Mr. Severance: Very good. If we can find it we will give it to you.

Mr. Dickinson: I will proceed, and come back to that later.

By Mr. Dickinson:

Q. You were asked as follows, on page 5682:

"Q. I will ask you, Mr. Corey, whether you recall the fact that, during the last year you were President of the Steel Corporation, namely, the year 1910, the exports of steel rails by the Corporation to Australia amounted to 86,884.8 tons?" And you said:

"A. I do not recollect the figures."

Whatever the figures may be, Mr. Corey, state whether or not those sales that were made by the United States Steel Corporation or its subsidiaries to foreign countries were sold at a loss or at a profit.

A. At a profit.

Q. You were asked whether or not some of the rails which were made by the Tennessee Coal, Iron & Railroad Company under that Harriman contract, were complained of and taken back. Was that an entirely exceptional thing, when rails were furnished to railroad companies? Was that the only instance of that character that you knew of?

A. No.

Q. In a new mill would that be more likely to happen than in one that had been running and gotten down to good bearings.

A. In all probability, yes.

Q. You were questioned, Mr. Corey, about the cost of making those rails by the Tennessee Company. I will read to you from the minutes of the United States Steel Corporation, 99th meeting of the General Managers of Sales Association, page 632, printed Volume II, Government Exhibits. It says the meeting was held in the Empire Building, New York, at 11:00 A. M., Friday, November 20th, 1908. Then it gives a list of those present, which I shall not read unless it is called for, and there is a heading "Increased Finishing Capacity, Tennessee Coal, Iron & Railroad Company."

On page 635, Mr. Burr is reported as saying, referring to the cost of rails to the Tennessee Company:

"As a matter of fact, their cost on rails at Ensley for the last three months has been under $20.00, and they have not been running half time."

Do you know whether or not at any time after the acquirement of the Tennessee Coal, Iron & Railroad Company by the United States Steel Corporation the making of rails by the Tennessee Company was reduced to that or approximately that amount?

A. At what period is that?

Q. This is November 20th, 1908.

A. I fail to recall those exact figures, but I would believe that a statement made by Mr. Burr would be absolutely correct.

Q. Did you keep in touch with the reports from that company?

A. I did.

Q. Was there or not a decrease in the cost of rails from the time you took it over?

A. I could not state, specifically, that there was a reduction in the cost of rails immediately after we took it over, but within several years after we had taken it over there was a reduction in the cost of all materials manufactured by that company.

Q. Mr. Corey, did you ever hear of a company by the name of the Seminole Land Company, or a company with a similar name to that?

MR. SEVERANCE: I object. That is not re-direct. There is no such thing as that gone into on direct examination.

MR. COLTON: It does not make any difference.

MR. SEVERANCE: I do not suppose it does to you; but I wish to make my objection for the record.

THE WITNESS: I have no recollection.

By MR. DICKINSON:

Q. If there is such a company, you know nothing, of your own knowledge, of it?

A. I have no recollection. I may have heard of it.

Q. To be a little more specific, Mr. Corey, I will ask you whether you know anything about a company in Alabama named the Seminole Land Company or a similar name to that, which has acquired iron lands in and around the Birmingham district.

A. I do not.

Q. You were asked in the former examination something about a girder rail mill. Now, with a view of asking you some further questions on that subject, I am going to read to you from the minutes of the Carnegie Steel Company, printed volume III of the Government Exhibits, page 1102 *et sequitur*, the date of the meeting being January 18th, 1898, you not, however, being recorded as present.

MR. SEVERANCE: Before you read that, I object to counsel endeavoring to suggest to the witness by reading the record of some meeting at which he was not present, which purports to be of a date long prior to the organization of the United States Steel Corporation, and particularly concerning a matter which was not gone into or touched upon in the cross-examination. It is not re-direct examination, and it is entirely improper and incompetent.

By MR. DICKINSON:

Q. (Continuing reading). "Mr. Peacock: 'In discussing the girder rail situation with several of our people, fear has been expressed that we would not be able to take care of that

business this year, and that it would pay us to defer making girder rails until next year, especially considering the number of orders for other products we are getting. I have taken up the matter with the other girder rail makers, with a view to staying out of the market for a consideration, and expect to have the matter closed within a few days on terms very favorable to us. There seems to be considerable inquiry for T-rails, but we have no definite orders to report today.' "

And, at the bottom of page 1103:

"MR. MORRISON: (In reply to the Chairman) 'The girder rail mill is too large a mill to make T-rails to advantage.' "

Then, further, at a meeting of the Board of Managers of—

MR. SEVERANCE: I make the same objection to reading from this further meeting.

By MR. DICKINSON:

Q. Yes. I read from page 1104:

"The Carnegie Steel Company, Limited, held at the General Offices of the Association, Carnegie Building, Pittsburgh, Pa., 12:30 P. M., Tuesday, January 25th, 1898," as follows:

MR. SEVERANCE: It is conceded that Mr. Corey was not at that meeting either?

MR. DICKINSON: Yes. He was not there.

By MR. DICKINSON:

Q. (Continuing reading). "Mr. Peacock: 'We have closed up the girder rail matter of which I spoke last week, receiving $100,000.00 in consideration of which we are to defer, for one year from January 1st, the making of girder rails. Out of this we will have to pay Wharton $7,500.00 for the cancelation of our contract to sell all our 1898 product through him. This leaves us in as good shape to begin making girder rails next year as we are now. In this connection I would like to correct the minutes of last week's meeting. The first approaches in this matter were made by the other girder rail makers. They approached us. We did not go to them."

"MR. FRICK: 'It seems to me the arrangement is a very good one, especially as that mill will have all it can do any-

way. Our expenditures so far in fitting up the 33 inch mill for making girder rails amounts to $61,000.00. We get this back and have a profit of over $30,000.00.' "

Now I will ask you whether or not you recall that the Carnegie Company did have a mill which was capable of making girder rails.

MR. SEVERANCE: I object to that on the ground that the witness should not have his memory refreshed or attempted to be refreshed by the means adopted, and that it is not redirect examination.

THE WITNESS: From that statement of facts in the minutes I have no doubt that they had a mill, but I do not recollect particularly. It is 17 years ago.

MR. SEVERANCE: Your figures are a little in error, Mr. Corey. It is 14 years ago.

THE WITNESS: I will accept the correction.

MR. DICKINSON: We reserve the right to recall Mr. Corey after we get the correspondence we have called for. With that understanding we will not question Mr. Corey any further.

RECROSS EXAMINATION.

By MR. SEVERANCE:

Q. Judge Dickinson drew out from you the fact that you have a considerable investment in bonds and stock of the Steel Corporation. You stated in answer to a question that about one-fourth of your fortune is invested in it. He then asked you, following that up, as to whether your sympathies were not with the defendant Corporation in this suit. You recall that, do you not?

A. Yes.

Q. And you said that they were. You did not mean by that to state that your sympathies were with the defendant in this suit because of any personal interest that you possess, and that your testimony would be influenced by any interest that you have as a stockholder or bondholder, did you?

A. Certainly not; I only told the truth.

Q. And you do not wish to be so understood, that you

did testify one way or the other in this case because of your personal interest?

A. Certainly not.

Q. And your sympathies in the matter are caused by the view you take as to the broad principles that should be applied to the situation, are they not?

A. I do not know that I understand the question.

Q. You know what you think should be the result. You sympathize with what you think should be the result in the case; not what will be, but what ought to be?

A. That is too deep for me.

Q. You do not understand the question?

A. No.

Q. I think Mr. Lindabury suggests that the question went further. You were asked whether you did not desire the defendant to succeed in the case. Was that question put to you?

MR. CHADBOURNE: No, the government to fail.

MR. SEVERANCE: It would be the same thing.

By MR. SEVERANCE:

Q. You said that, did you not?

A. Yes.

Q. That was because you felt it ought to fail, not because you owned some stock in the Corporation or bonds, isn't that true, as a matter of principle?

MR. DICKINSON: I object to that as irrelevant.

MR. SEVERANCE: If you object to it, I withdraw the question. I did not suppose you would object to that.

By MR. SEVERANCE:

Q. You were also asked by Judge Dickinson this morning with reference to your testimony concerning the desire of some of the competitors of the Corporation to raise the price of steel rails, and that you opposed such action. There was no way that you could have prevented any of the others charging a higher price if they had wanted to, was there? They had a right to charge that higher price if they wanted to, but it would have been difficult to have raised the price

as against a negative action of the Corporation or the big rail makers?

A. Yes, they had a right to advance the price, but it would have been impracticable or impossible as long as the Corporation did not advance its price.

Q. And that same thing would apply if you had tried to advance the price and the Lackawanna and the Pennsylvania Steel and the Cambria had insisted upon keeping the price down. You would have had difficulty, would you not, to do business at the higher price?

A. Certainly; it would have been impossible.

Q. What is that?

A. I say, it would have been impossible.

Q. Impossible, yes. So that the large manufacturers, one or more of them, can keep down the price, but they can not raise it; is not that true, Mr. Corey, unless the others fall in line with such rates?

A. I will have to hear that again.

(The pending question was repeated by the stenographer.)

MR. SEVERANCE: Perhaps that is a little involved. I mixed it up a little bit.

By MR. SEVERANCE:

Q. You testified the other day that in the eastern district, there was, I think I might say, a surplus rail production.

A. Surplus capacity.

Q. So that with that situation existing it was not feasible for any one of the large manufacturers to put the price of rails up if the others stood out against it?

A. Absolutely.

Q. By "absolutely" you mean they could not?

A. Could not do so.

Q. I want to call your attention to this matter. Is it not a fact that after the panic of 1907 and 1908 some of the other large manufacturers cut the wages of their employees, but that the Steel Corporation, although asked to do so by the other manufacturers, refused to do so, and maintained the wages at the higher price that obtained before the panic?

MR. DICKINSON: Wait a moment. That is objected to as irrelevant and incompetent.

(By request, the stenographer repeated the question.)

MR. DICKINSON: That is also objected to on the ground that it is leading the witness, who is a director of the defendant company.

MR. SEVERANCE: This is cross-examination.

MR. COLTON: We have not gone into labor at all.

MR. SEVERANCE: You did not dare to.

MR. COLTON: I object to it as immaterial. That is not an issue, and that is new matter not brought out upon direct or cross-examination.

THE WITNESS: Am I at liberty to answer the question?

MR. SEVERANCE: Oh, yes.

THE WITNESS: That is a fact.

By MR. SEVERANCE:

Q. You were examined by counsel with reference to costs, and he selected the year 1897. Is it not a fact, as shown by statistics, that the prices of labor and materials were lower in 1897 than they have been in any year since the iron and steel statistics have been kept?

A. I can only answer that in a general way, but I believe that immediately after the panic in—no, I can not give an intelligent answer to that.

Q. You can not give the exact year?

A. No, because prices——

Q. It lasted for several years?

MR. COLTON: I object to that as leading.

MR. SEVERANCE: Counsel knows very well that my statement is correct, so if he does not remember it, I will not press it.

THE WITNESS: I do not care to answer that question.

By MR. SEVERANCE:

Q. Very well, I do not care to press you. Now, $9.25 is an abnormally low price for pig iron, is it not? I withdraw that question, and I will ask it in another way.

You recall that when you were examined by counsel the

other day as to the purchase of Valley pig iron, when counsel was endeavoring to show by you that that was done to sustain the stability of the market, the price was $18.50 to $19 a ton?

MR. DICKINSON: I object to that.

MR. SEVERANCE: Let me finish the question.

By MR. SEVERANCE:

Q. (Continuing). I will ask you whether or not, as a matter of fact, the prices of pig iron usually range above $9.25 a ton.

A. Ask that again.

(The question was repeated by the stenographer.)

A. The selling price?

Q. Yes, pig iron.

A. The selling price of pig iron?

Q. Yes.

A. Yes, materially.

Q. Have you ever known pig iron to sell for very much less than $9.25 in your whole experience?

A. I have never known pig iron in the North to sell as low as $9.25.

Q. Will you give me your best opinion as to the cost of a rail mill, that is large enough to be economical?

MR. DICKINSON: Are you through?

MR. SEVERANCE: Yes.

MR. DICKINSON: That is objected to as entirely too indefinite, not showing the kind of rail mill, the capacity or the tonnage.

MR. SEVERANCE: I said "of economical size."

THE WITNESS: Do you consider that an important question?

By MR. SEVERANCE:

Q. I would not have asked it if I did not. Yes, I would like your answer, your best judgment. If you feel that you have to have more data on which to base an opinion, I do not want to press you for an opinion, but if you feel that you can answer it, I would like to have it.

A. I should say a million dollars.

Q. Would that build a steel mill?

A. I think it would.

Q. It would be rather small, would it not? I do not mean merely the rolls; I mean the works necessary to produce steel rails from the plant.

MR. DICKINSON: What was that question?

MR. SEVERANCE: I say a plant of economical size that will produce the iron and steel and the finished rails.

THE WITNESS: But you did not ask that question at all; you asked me about a rail mill.

By MR. SEVERANCE:

Q. I know that; you are right and I am wrong. I am asking that now. I will withdraw the question and ask it again. What would be the cost of a mill, that is, the whole thing from the ore up, the blast furnace and the steel plant and the rail mill large enough to be economicaliy operated?

MR. DICKINSON: That is objected to because it does not state what time the question refers to, and it is also too general in character to enable the witness to answer.

By MR. SEVERANCE:

Q. I will fix the date as of the time Mr. Corey went out of active business as president of the Corporation.

A. Shall I answer the question?

Q. Yes.

A. I will have to do a little figuring.

THE WITNESS: Do you mean open hearth rails or Bessemer?

By MR. SEVERANCE:

Q. Either one or both, separately. I mean, state them separately if there is a difference in cost.

A. There is a material difference.

MR. COLTON: Do you want him to give the tonnage and the capacity?

MR. SEVERANCE: I am simply asking him for a mill large enough to be economically operated. You qualified him as an expert; I am leaving that to him.

MR. DICKINSON: I think the positions he has held with these respective companies show that he is an expert.

MR. SEVERANCE: I think so too.

THE WITNESS: I am prepared to answer the question. A rail plant equipped to produce 50,000 to 60,000 tons of rails per month would cost between ten and twelve million dollars.

By MR. SEVERANCE:

Q. That includes the blast furnace, and open hearth or Bessemer, which?

A. I made it range from ten to twelve millions, so that it would cover both.

MR. DICKINSON: There is a little misunderstanding between Mr. Colton and myself as to whether it included the ore.

MR. SEVERANCE: I said from the ore up; not the ore.

THE WITNESS: No ore; nothing but the raw material.

By MR. SEVERANCE:

Q. You do not know, from your own recollection, do you, Mr. Corey, anything about the shipments of steel rails from this country to England in 1905, the year after this date that is called to your attention by Judge Dickinson from the record?

A. I do not recollect.

Q. You would not undertake to say that the year after that there was not a substantial shipment to England, would you? You have no recollection about the dates?

A. I would not.

MR. DICKINSON: I object to this, because the question is based upon a statement fixing it as the year 1905. I do not understand Mr. Corey to fix the time.

MR. SEVERANCE: Mr. Dickinson, you read from the record, in the course of your peculiar means of refreshing the witness' recollection, from a meeting in 1904, and all the testimony that you tried to get from Mr. Corey, with very little success, on that subject, started from 1904. I am asking about the following year.

MR. COLTON: That was subsequent to 1904 that everything was to be done in regard to that matter.

MR. DICKINSON: I still insist that I do not think Mr. Corey has fixed any date as the time when he reached that understanding that we refer to.

MR. SEVERANCE: He did not.

MR. DICKINSON: And your question impliedly fixed it as approximately 1905. I would like to get it fixed, but I do not think it has been, so far.

By MR. SEVERANCE:

Q. You were asked by counsel if the return of the rails, or a certain amount of rails made under that Harriman contract by the Tennessee Coal, Iron & Railroad Company, was the only instance in which rails had been turned back, and you said it was not. You do not recall, do you, however, any other case where any such percentage of rails was returned on a large order as in that case?

A. It is very difficult for me to answer that intelligently. I recollect that our people reported there were a number of rails returned, and made much complaint about the same; but it only came to me in a general way, and I could not state. The only thing I can say particularly is that our people complained continually to me about the number of rails that were coming back.

Q. On that order?

A. On that order.

Q. Yes.

A. But what the number was I could not state.

MR. SEVERANCE: That is all.

MR. DICKINSON: We have nothing further to ask Mr. Corey.

(Whereupon, a recess was taken until 2:00 o'clock P. M.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

J. S. GRASTY,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dickinson:

Q. What is your age?

A. Thirty-three.

Q. What is your residence?

A. Charlottesville, Virginia.

Q. What occupation have you there?

A. I am professor in the department of geology in the University of Virginia.

Q. How long have you been such professor at the University of Virginia?

A. Since 1908.

Q. Mr. Grasty, please state, so that I will not have to ask a number of questions, in a narrative form your education and experience in the matter of geology and chemistry, and actual investigations of iron and coal properties and plants in this country and abroad.

A. I received my degree of Bachelor of Arts at Johns Hopkins University. Following that I attended Washington and Lee University, where I graduated in geology and studied engineering. Then I returned to the Johns Hopkins University as a graduate student in the department of geology, studied geology and mineralogy, chemistry and allied subjects. Following that I attended the intercollegiate field course conducted by the professors of Johns Hopkins, Harvard, Yale, Syracuse, and Northwestern and Reserve University.

Q. Will you just explain what that was?

A. That was a field course in geology, covering the geology of all the eastern part of the United States, conducted by the professors of those different institutions. Then I did some

work in the United States Geological Survey in Virginia, among the Oriskany ores. After that I returned to Johns Hopkins. Following that year I went to the Massachusetts Institute of Technology and graduated there in Chemistry. Then I went south to examine some mineral properties, and was engaged by a Baltimore syndicate to investigate coal and iron properties.

Q. State what section of the South.

A. Chiefly in Alabama.

Q. Will you give the time?

A. It was about 1904.

Q. How long did you continue there?

A. I continued there for a couple of years, returning to Johns Hopkins in 1907, and received my Doctor's degree the following year, being called back there to get out a report on Massachusetts cement materials for the Maryland Geological Survey. I have been connected therefore with the United States Survey, Maryland, and at present with the Virginia Geological Survey.

Q. Did you ever make any trips, any other trips to Alabama, other than those you have mentioned, for the purpose of examining the ore, and if so, when and how much time did you spend there?

A. I was there again for a year from 1908 to 1909. I had a year's leave of absence from Virginia University. I made many short trips, but I am mentioning now only the longer trips that I made, I mean that involved my staying there any considerable length of time.

Q. State whether or not you became acquainted with the ore and coal deposits of Alabama during that time.

A. I did.

Q. What different kinds of iron occur in Alabama, and where are those deposits, and in what portion of Alabama are they thickest and commercially most valuable?

A. There are two types of deposits in Alabama, the magnatite, which are not important commercially, and the hematites and limenites, or brown ores, which are commercially important. Of those, the hematites are by far the most important, and their tonnages are most definitely known. The hematites are of two kinds, the so-called gray ores, the gray

hematites of eastern Alabama, Talladaga County, and the Clinton iron beds, which occur in the Clinton formation and extend from about fifty miles from Birmingham northeastward, passing through northeast Alabama and northwest Georgia, and Tennessee, and can be traced even farther northward; but the chief deposits are in the Clinton formation in the area just south of Bessemer and extending for ten or fifteen miles northeast of Birmingham.

Q. How far is Bessemer from Birmingham?

A. I should say it was in the neighborhood of about eighteen miles, probably, or a little farther than that.

Q. How far northeast?

A. It is not confined just to Alabama, by any means.

Q. How far do those Clinton ores extend?

A. They extend to New York.

Q. Are not those ores as thick there as they are in Alabama?

A. No, they are thin, two and a half to three feet in New York; thin in Pennsylvania; they have been worked in Virginia when the price of iron is high, they are very thin and silicious; continuing through eastern Kentucky into Tennessee, which brings us to the vicinity of Chattanooga, and thin to the north of Chattanooga, where they are worked at Rockwood and from Chattanooga to Attala, just about forty miles, I should say, the Clinton ores are low in iron content, with probably only three or four points where they are at all workable, the intervening points are lean and non-workable.

Q. Are they not anywhere of the thickness or richness in iron content comparable to what they are around Birmingham and Bessemer?

A. They are not.

Q. You spoke of Chattanooga. Is there any iron furnace in Chattanooga?

A. The Citico Furnace Company and the Chattanooga Furnace, which Mr. Buck I think is President of.

Q. Where do they get their ores?

A. The Citico Furnace gets its ore from Attala, which is 40 miles from Birmingham, about the same distance to Chattanooga, and from a point northeast of Gadsden, which is near Attala; and the Chattanooga Furnace Company gets

ores from Estelle, Ga., which is a continuation of the Clinton formation, where it is brought up to the west of Lookout Mountain in Northwest Georgia.

Q. Are there beds of Clinton ore found everywhere that the Clinton Group or geological formation occurs?

A. Practically so, but those beds are only of workable thickness and suitable composition for fluxing at a relatively few places in the Clinton formation. The Clinton formation is of widespread extent, but its iron ore beds of commercial importance are not.

Q. They are not as widely extended as the formation itself, you mean?

A. Not as widely extended.

Q. State whether or not the furnace conditions in Birmingham and the Birmingham region differ materially, so far as juxtaposition to these elements or ingredients that go into the making of pig iron are concerned, from other sections of Alabama and the United States generally and other countries where iron is made.

A. The raw materials for manufacturing iron in the Birmingham district are better situated for assemblage than in any other portion of Alabama, or in Chattanooga, or, in fact, in the United States and, I might add, in the world.

Q. Please explain the reason for making that statement.

A. The reasons for making that statement are these: The materials employed in the manufacture of iron are iron ore, coke and fluxing stone. These materials are all found within a narrow radius in the Birmingham district.

Q. From a transportation standpoint is there such a district known as the Birmingham district?

A. Yes.

Q. Within what radius is that?

A. Within a radius of 25 miles there is a 12½ cent freight rate.

Q. What does that 12½ cent freight rate apply to?

A. That applies to all material in the district.

Q. To iron ore and coke?

A. It applies to iron ore and coke.

Q. And to any fluxing material, if any has to be used?

A. And to the fluxing material.

Q. Is there any other place that you know of where those conditions exist?

A. No.

Q. (Continuing.) Where all the materials can be assembled as economically as they can there?

A. I know of no such place.

Q. State whether or not you have, in the pursuit of your studies, made a study of the cost of production of iron in various portions of the United States.

A. I have, sir.

Q. State whether or not with the same character of plant, looking to size and efficiency of plant, there is any place in the United States where pig iron can be made as cheaply as it can in the Birmingham district.

Mr. Reed: That is objected to, for the reason that the witness has not been shown to be competent.

By Mr. Dickinson:

Q. Now, answer, if you please.

A. I know of no other place where it can be made so cheaply.

Q. At Pittsburgh does the iron have to be brought from a distance or not?

A. It has to be brought from the Lake Superior district.

Q. How about the coke?

A. The coke has to be brought in too.

Q. There is water transportation and rail transportation also, is there?

A. Yes.

Q. But, take the Indiana plant at Gary, situated on the Lake; has that an advantage, or not, over Pittsburgh?

A. It has, I think.

Q. On account of what?

A. Its proximity to the raw materials, and less transportation charges on the assembling of raw materials.

Q. There is no railroad transportation at all, is there?

A. No.

Q. Or water transportation?

Mr. Lindabury: How would it do, Judge, to let us see

what the witness knows, without your telling him? You would not mind that, would you?

MR. DICKINSON: Not at all.

MR. LINDABURY: We would prefer it.

MR. DICKINSON: That question may be stricken out.

MR. LINDABURY: Oh, no. Let that be a guide for the future.

MR. REED: When you are telling us, will you not tell us how it gets from the mines to the boat?

By MR. DICKINSON:

Q. I will ask you that, Professor Grasty: Is there railroad transportation over any part of the transit of Lake Superior ores to the plant at Gary?

A. There is, of course; but the main transportation is by water.

MR. REED: Which answer do you wish to stand, Judge?

MR. DICKINSON: The last answer, of course——

MR. REED: He has testified that there was no railroad transportation, and now he says there is.

MR. LINDABURY: That was the Judge's testimony. He is not entirely responsible for that.

By MR. DICKINSON:

Q. There is transportation by rail, you say?

A. By rail from the mines to the ships.

Q. And then how is it carried?

A. Then it is carried by water.

Q. Take the other material, such as coke and limestone for fluxing.

A. They have to be brought in by rail. They are not all there.

MR. LINDABURY: Judge, do you mind seeing if he knows what state the mines are in?

MR. DICKINSON: That would be rather a departure from my line of inquiry just now.

MR. LINDABURY: You would not mind asking that, just to please me, would you?

MR. DICKINSON: In what respect?

MR. LINDABURY: Just to ask him what state the mines are in, from which they ship to Gary.

By MR. DICKINSON:

Q. Do you know where the plant at Gary gets its ore?

A. No; I do not. I know that they get it from the mines of the Lake Superior district. Further than that I do not know which mines.

Q. You do not know which mine?

A. No.

Q. But in which states are the mines situated that you refer to when you speak of the Lake Superior district?

A. Michigan and Wisconsin.

Q. Any other state?

A. Those states surrounding Lake Superior to the south—Wisconsin and Michigan—the states in which the Menominee and Gogebic and Mesabi are located.

Q. And where is the Mesabi situated?

A. It is situated in Wisconsin.

Q. In Wisconsin?

MR. LINDABURY: Now, Judge,—

MR. DICKINSON: I am just asking him.

MR. REED: He has already answered, Judge.

MR. DICKINSON: I know he has. But are you sure about that, Professor?

MR. LINDABURY: Why?

MR. DICKINSON: I want to know.

MR. LINDABURY: This is not cross examination, Judge. He is not a director in the Steel Corporation.

THE WITNESS: I am not familiar, Judge, with the Lake Superior ore situation, except from the reports on that district.

By MR. DICKINSON:

Q. Have you ever been up there?

A. No, sir.

Q. Oh, you have never been up there?

A. No, sir.

MR. LINDABURY: They do not teach geography in these schools from which he has graduated. You see the importance of not asking leading questions, Judge, do you not?

By MR. DICKINSON:

Q. How do the manufacturing costs of Alabama compare with those of Virginia?

A. There is a difference of about $2 per ton.

Q. You spoke of gray ores. Do those ores carry with them fluxing material?

A. No; they contain iron, silica, alumina—no lime.

Q. How about the Clinton ores around Birmingham?

A. They contain iron, alumina, and in the case of the hard ores, lime.

Q. What percentage, if any, of fluxing material ordinarily has to be added to those Birmingham ores in order to make iron?

MR. REED: We object to that until the witness is shown to have some metallurgical experience, or some knowledge of furnace practice.

THE WITNESS: That will vary. In some cases the ores are so mixed that it is not necessary to add any limestone for fluxing purposes.

By MR. DICKINSON:

Q. How is it as to others?

A. As to others it is necessary to add limestone for fluxing purposes; a small quantity.

Q. When you went to this Birmingham district for the purpose of making an investigation, what was the object that you had?

A. I went there for a Baltimore syndicate, and the purpose was to obtain Clinton ores suitable for admixture with their gray ores, which were silicious ores; the practice of the Birmingham district and of Alabama being to mix limey ores with silicious ores.

Q. To what extent did you become acquainted with the holdings of iron properties there in that section of the country about Birmingham?

A. I examined all of the Clinton occurrences in Alabama.

Q. Just state what kind of examination you made; whether you went on the property or not.

A. I went on the property. My examination was made in order to obtain an iron ore property for this syndicate, and in order to determine where the land might be available, I determined the ownerships at various points, and made examinations at various points. In doing this, all over the Birmingham district and Alabama, I covered the entire Clinton occurrence.

Q. At what time did you say that was, Professor Grasty?

A. That was in 1904, 1905, 1906, and down to 1907, in fact.

Q. State whether or not you became familiar with the holdings of iron ore of the Tennessee Coal, Iron and Railroad Company as of that time.

A. I did, sir.

Q. Looking to the heart of that district, where the richest commercially available ores were, do you know approximately what per cent of the outcrop was owned at that time by the Tennessee Coal, Iron and Railroad Company?

MR. REED: That is objected to because it is too vague. The expression "heart of the district" does not define it very well.

MR. DICKINSON: I think that may be a good criticism. I will modify the question.

By MR DICKINSON:

Q. Do you know what per cent of the outcrop the Tennessee Coal, Iron and Railroad Company own in that portion of the Birmingham district that came within the twelve and a half mile radius?

MR. REED: He has not testified to a twelve and a half mile radius, Judge. He testified to a twelve and a half cent freight rate.

May I suggest that he has defined the district, in the beginning of his examination?

MR. DICKINSON: I will say, then, that came within the twelve and a half cent freight radius.

MR. REED: Let me suggest this, Judge: That in the beginning of his examination he defined the richest district as

that which ran from opposite Bessemer eighteen miles south of Birmingham up to fifteen miles northeast, or thirty-three miles of Red Mountain.

By MR. DICKINSON:

Q. What per cent at that time, about January 1, 1907, did the Tennessee Coal, Iron and Railroad Company own of the known available commercial ore in the Birmingham district, or in the region contiguous thereto? Now you can answer that.

MR. REED: Do not answer that yet, Mr. Grasty.

I think we must object to that question also as too vague, because the expression "the Birmingham district and the district contiguous to it" cannot mean anything definite either to the witness or to the court.

MR. DICKINSON: We will see. We will make it more definite, probably.

MR. LINDABURY: Would he not speak of it as the Red Mountain district?

MR. REED: But he has changed his question now and speaks of all commercially available ores in the Birmingham district and contiguous thereto.

MR. LINDABURY: You do not mean the Red Mountain district?

MR. DICKINSON: No, but I mean all the available commercial ore that could be considered contributory to the manufacture of ores in the Birmingham district. Now, do you understand that question?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Please answer it.

A. Before I could answer that question intelligently it would be necessary to state just where the Clinton iron ore occurs, and most suitable for fluxing.

MR. REED: That is not what you were asked.

By MR. DICKINSON:

Q. Please make that statement, and then answer the question with such qualifications or explanations as you choose to make.

A. The extent of the Clinton formation carrying the best and thickest ore is from a point just above Birmingham, or just opposite the city, down to Sparks Gap. In this, which is the very heart of the Birmingham district, the Tennessee Coal & Iron Company owns about at present 70 per cent of the outcrop.

Q. Did you say "owns?"

A. Yes, sir.

Q. I am not asking you what they own, but what they owned as of that time. I want your answer to relate to that time, as of January, 1907, not the present time.

A. They controlled about 70 per cent.

MR. REED: Of the outcrop?

MR. DICKINSON: Of the then known commercially available ore. Did you answer so?

THE WITNESS: I meant of available ore, of course.

MR. REED: Which answer do you make, the available ore or of the outcrop?

THE WITNESS: I mean available ore.

MR. LINDABURY: Please read the question or the answer where "outcrop" occurs.

(The answer was repeated by the stenographer as follows:)

"A. The extent of the Clinton formation, carrying the best and thickest ore, is from a point just above Birmingham, or just opposite the city, down to Sparks Gap. In this, which is the very heart of the Birmingham district, the Tennessee Coal & Iron Company owns about 70 per cent of the outcrop."

(The subsequent colloquy between counsel and witness was also repeated by the stenographer.)

By MR. DICKINSON:

Q. Suppose you took all of the holdings, all of the ore land owned or controlled by the Tennessee Coal, Iron & Railroad Company, in that region, and compared them with ores of all other ownerships, what proportion did the Tennessee Coal, Iron & Railroad Company then own or control of the known available commercial ores?

MR. REED: I object to that. That is not the same question you just asked——

MR. DICKINSON: I do not know, I just want to see if it is.

(By request, the pending question was repeated by the stenographer.)

MR. LINDABURY: Before he answers that, your question involves a contradiction or impossibility of answering. Why should you say what the others owned? You can compare it with the total of the ores, regardless of whether they are owned or not.

MR. DICKINSON: Of course, that was involved, but you are right. The percentage of the whole is what I mean.

MR. LINDABURY: Without regard to the other ownerships?

MR. DICKINSON: Without regard to other ownerships.

MR. LINDABURY: Of course, it must be owned by somebody.

MR. DICKINSON: But what percentage of all the holdings in that territory was controlled by the Tennessee Coal, Iron & Railroad Company?

MR. REED: Just for my enlightenment, explain how that differs from the preceding question.

MR. DICKINSON: I think it covers a little broader area.

MR. REED: But what other does the present question cover.

MR. DICKINSON: The available ore.

MR. REED: In Alabama?

MR. DICKINSON: In Alabama.

MR. LINDABURY: The other covered ore south from Birmingham, south from the Gap.

MR. DICKINSON: I am speaking of the entire holdings of the Tennessee Coal, Iron & Railroad Company tributary to Birmingham in operations as compared with all the other ore.

THE WITNESS: Two different percentages would be reached, depending upon how far the outcrop or rather in the direction of the dip, land were taken in consideration in making this comparison. If we took the alignment of the lower reaches of Shade's Creek in a general northeastward direction paralleling Red Mountain, the percentage owned by the Tennessee Coal, Iron & Railroad Company would be

about 55 per cent. If, however, we included the ore extending to the foot of Shade's Mountain, or Shade's Mountain escarpment, and continue that southwestward, and bring it within a mile of the outcrop of Sparks Gap, the comparison there would be about 70 per cent, between 66 2/3 and 70 per cent of the total.

By MR. DICKINSON:

Q. State whether or not you became acquainted with the holdings of coking coal lands of the Tennessee Coal, Iron and Railroad Company and that of other lands in Alabama.

A. I have examined coal lands in the Warrior coal field to Kahawba, but I am not familiar in a detailed way with the holdings of the Tennessee Coal, Iron and Railroad Company, except that they own a very large tonnage and a very large acreage of coal lands, and I know where those coal lands occur, but as to the detailed knowledge of the tonnage of coal, I am not informed.

Q. Are you informed as to the percentage of the whole? I mean, of your own investigation.

A. The percentage of the Warrior coal fields of all available coal lands in Alabama?

Q. Of all coal lands commercially tributary to Birmingham.

MR. REED: I object to that, the witness having said that he did not know the details.

MR. DICKINSON: I am not asking for details; I am asking if he made any such examination as would enable him to state the percentage of their holdings as compared with the entire holdings.

THE WITNESS: I have not worked that out, Judge.

By MR. DICKINSON:

Q. You are not prepared to answer that?

A. I am not prepared to answer that.

Q. State whether or not in making this investigation, for the purpose you have stated of acquiring ore lands there, how you found the distribution of such ore lands as could be purchased, and whether or not they were sufficient to be purchased, lying in sufficiently large bodies to justify the operation of any mining upon a large scale.

A. No; the only ore lands which were available were ore lands lying over the eastern part of Shade's Valley, requiring a shaft of 1,500 to 2,000 feet or more to reach the ore. I did not consider that as being available for a new, independent iron making proposition.

Q. How were those lands that could be purchased in respect to acreage and situation, in respect of contiguity? State whether or not there was any large acreage or not to be brought together for a single operation.

A. It was impossible to acquire ore lands in the section I have alluded to in large quantity, because of other ownerships intervening.

Q. Show how that would operate in respect to opening a mine, just how it would affect a new operation.

A. If a mine were opened in that particular section, which has never been done, it would require a shaft.

Q. You mean to say there is no mine open in that section?

A. Not in Alabama, by shafts.

Q. What section are you referring to?

A. I am referring to Shade's Valley, because the other ore lands need not be considered or taken into consideration in the Birmingham district, because of the thinness of the bed and the low iron content. In this particular region, Shade's Valley, where the Clinton ores extend under Shade's Valley, and under Shade's Mountain, a shaft opened there would require an ownership of land without other bodies of land intervening. By that I mean this, that if you were to open that shaft and other parties owned forties scattered through—

Q. You mean forty acres?

A. Forty acres, forty acre lots scattered through this, it would make it impossible to work it economically.

Q. What would have been the cost of sinking such a shaft and preparing for operation?

MR. LINDABURY: One moment.

MR. REED: Yes, we will object to that; the witness has not been shown to be competent to give an opinion on that point.

THE WITNESS: It has been estimated——

MR. REED: I object to that as hearsay.

MR. DICKINSON: Go on and answer.

THE WITNESS: (Continuing.) It has been estimated that the cost of such a shaft would be from $750,000 to $1,000,000.

MR. REED: We will ask that the answer be stricken out as not responsive, the witness having been asked to give his own opinion, and having replied by giving a hearsay opinion of some one else.

By MR. DICKINSON:

Q. State whether or not this came within your consideration when you were looking for those lands for these people.

A. It did. I consulted with engineers about it and we discussed that whole matter, and it was considered that the cost would be prohibitive for any but a very large concern owning a very large acreage and enabled to work a sufficiently large tonnage to make a mine operated under those conditions pay.

Q. Did the consideration of that question or not come within the investigation you were carrying on?

A. It did.

Q. As a part of the problem?

A. As part of the problem.

Q. And you did consider it?

A. I did consider it.

Q. What extent of land did you find there; that is to say, what sized bodies that were not owned and controlled by other operating companies?

A. I suppose it would have been quite impossible to have gotten over 500 acres in one body, if that much. In fact, I know of no property, of all those I examined, say with 500 acres involved, that there was not some forty acres or eighty acres or more intervening in that body.

Q. Through what portion of the territory there did your investigation extend?

A. It extended all over Shade's Valley and all over the Birmingham district.

Q. You were asked about the operation at Gary, Indiana. Do you know whether there are any iron mines as near Gary as the iron ore is near the plants at Birmingham?

A. No, there are none. As I stated, the ores from Gary

come from the Lake Superior district, including the States of Minnesota, Wisconsin and Michigan. The state which I could not recall was Minnesota.

Q. Do you recall now about Minnesota?

A. I recall that this is included in part of the general Lake Superior district. It encircles the Lake Superior, or surrounds Lake Superior, divided into a number of different mining districts.

MR. LINDABURY: Would you mind asking him what ores are in Minnesota, Judge?

MR. DICKINSON: I do not see any reason why I should.

MR. LINDABURY: Just to please me, Judge.

MR. DICKINSON: Why certainly, I would do anything to please you.

MR. LINDABURY: What is the name of the ore range in Minnesota? Do you mind asking him?

By MR. DICKINSON:

Q. State just what you know about the ore ranges in Minnesota.

A. As I stated when that question came up, I have no personal knowledge of the ore deposits of the Lake Superior district.

MR. LINDABURY: I only wanted to know the name of the range.

THE WITNESS: Not having made any examination there—

MR. LINDABURY: Only the name of the range; that is not much, in Minnesota.

THE WITNESS: Would that testimony be considered competent?

MR. DICKINSON: You can answer the question if you know it; there is no question of competency.

THE WITNESS: I do not know.

By MR. DICKINSON:

Q. Answer the question if you know what ore ranges there are up in that section.

A. I prefer not to go into that question, as I say; I do not know that region from personal examination.

Q. What do you understand that question to mean? What do you understand the question to call for?

A. I understand you want to know whether the ore deposits occur around Gary in the same proximity to the furnaces as they occur in the Birmingham district. And my answer to that is no.

Q. No; that is not the question, now.

The question Mr. Lindabury wanted to ask was what information you have as to the ore ranges in Minnesota.

MR. LINDABURY: No, that was not it, Judge.

MR. DICKINSON: I thought it was.

MR. LINDABURY: The name of the great ore range in Minnesota was what I wanted to ask him.

THE WITNESS: My information is based on the reports of the Geological Survey.

MR. LINDABURY: They are mentioned in the Geological Survey.

By MR. DICKINSON:

Q. Do you know the names of the ore ranges up there or any of them?

A. The Mesabi, the Marquette, Menominee, Vermillion—

MR. LINDABURY: Do you say the Mesabi is in Minnesota?

THE WITNESS: No; I do not say that.

MR. LINDABURY: That is all.

By MR. DICKINSON:

Q. You were asked, Professor, if you knew what ranges were in Minnesota. Do you know?

A. I am afraid at this moment I do not recall them.

Q. Do you know whether any of those ore ranges are in proximity to Gary?

A. I know that they are not.

Q. And the ore transported from those ranges, wherever they are, has to be carried a greater distance to get to Gary than the ores have to be carried to get to the furnaces at Birmingham?

MR. LINDABURY: You are testifying again, Judge.

MR. DICKINSON: I am asking whether that is so.

THE WITNESS: That is so, Judge.

MR. LINDABURY: Oh, I have no doubt, Judge, after you tell him, he will agree with you.

By MR. DICKINSON:

Q. Say whether or not the Alabama ores are suitable for the manufacture of open hearth steel.

A. They are, sir.

Q. Are they suitable for the manufacture of Bessemer steel?

A. They are not.

Q. State whether or not the Clinton ores can be employed to make as good steel for the open hearth process as the Lake Superior ores.

MR. REED: I object to that because the witness has not been shown to be competent on that subject.

A. They can.

By MR. DICKINSON:

Q. Do you know, Professor Grasty, in 1907 what estimated tonnage of commercially available ore in Alabama was held by the Tennessee Coal, Iron & Railroad Company? And if that answer would vary as to taking in different territory, you can make your answer so as to cover both aspects or any number of aspects of the case.

MR. REED: Is not that the same question he has just answered?

MR. DICKINSON: No. I never asked him about the extent. I asked him, before, about the percentage.

MR. REED: Whose estimate do you mean, Judge?

MR. DICKINSON: His estimate.

THE WITNESS: Extending that to the alignment of Shade's Mountain, I would say that the Tennessee Coal & Iron Company owns over 400,000,000 tons of available ore out of a total of about 600,000,000 tons.

By MR. DICKINSON:

Q. Do you mean, or not, of the then known available commercial ore in that district?

A. Yes, sir.

MR. DICKINSON: That is all.

CROSS EXAMINATION

By Mr. Reed:

Q. Professor Grasty, the best ore of the Birmingham district is in a strip about 33 to 35 miles in length, is it not?

A. Yes.

Q. And that runs from Sparks Gap northeastward to near Morrow's Gap?

A. Above Morrow's Gap, yes.

Q. And you looked over this whole district when you were in Alabama?

A. Yes.

Q. And determined the ownerships of the different bodies of ore?

A. Yes.

Q. And you were familiar with them at the time you made this estimate of percentage?

A. Yes, sir.

Q. And is it of this district that you testified that the Tennessee Coal & Iron Company has 55 per cent of the ore?

A. Of that district, yes.

Q. How far back from the outcrop did you get in making that estimate?

A. Extending back to the alignment of the lower reaches of Shade's Creek.

Q. How much of the big seam do you figure to be workable?

A. I figure about 9 feet; 8 to 9 feet.

Q. How thick is the big seam?

A. The big seam runs up to 15 or 20 feet in places.

Q. Is it not thicker than that in places?

A. It is not workable, though.

Q. You figure 9 feet as the limit of workability?

A. It has been worked up to 12 feet.

Q. When you get back to Shade's Creek, what thickness do you figure that the big seam can be worked?

A. The big seam can be worked fully that thick.

Q. It does not taper to a point, then, when it gets back from the mountain?

A. No, sir; except along the edges of the original shore lines.

Q. How many acres did you want to get for your company in one tract?

A. I wanted to get several hundred acres suitably situated for operation.

Q. About how many hundred acres?

A. Well, if we could have gotten that acreage, along the outcrop—

Q. What acreage?

A. Five or six hundred acres suitably situated along the outcrop in what we considered good ore; as good, for instance, as some of that that the T. C. & I. has, that would have been satisfactory at that time, with the object, also, of extending that ownership.

Q. And about what tonnage did you want to get?

A. We wanted to get about 100,000,000 tons or more.

Q. How many tons of available ore is found in an acre in the district in which you wanted to buy?

A. What thickness do you take?

Q. I am asking you how many tons of what you consider available ore.

A. You would get about forty thousand tons to the acre.

Q. Then did you expect to find 100,000,000 tons in 500 acres?

A. 40,000 tons to the acre multiplied by 100 is how many?

Q. I will do your arithmetic for you. It is 4,000,000. You wanted to buy 500 acres in order to get 100,000,000 tons, but on your own statement of the number of acres you wanted to buy, you would only have 20,000,000 tons.

A. I said with the purpose of getting other land contiguous to that that we would have been willing to make that purchase, provided we could further extend the ownership.

Q. Then, in fact, you wanted to buy 2,500 acres; is that right?

A. We would have been willing to go ahead with our plans if we could have gotten this acreage on the outcrop.

Q. I am trying to find out how many acres you wanted to buy, Professor Grasty.

A. We would have bought 500 or 600 acres, and even a

larger acreage, if we could have gotten it. Not being able to get the smaller part, it was useless to consider the larger.

Q. But you tell me, in answer to one question, that you wanted to get 100,000,000 tons, and in answer to another question that you only wanted to get 500 acres, which is only 20,000,000 tons. Now, which was it you were looking for?

A. We would have taken 20,000,000 tons if we could have gotten it and gotten other land adjoining to it.

Q. Would you have bought 100,000,000 tons?

A. If we could have gotten it at a suitable price.

Q. What did you consider a suitable price?

A. The prices were ranging around $500 and up to $1,000 an acre.

Q. $500 an acre is a cent and a quarter a ton, is it not?

A. I have not figured it that way, but it is about that, I think.

Q. Did you not figure on the tonnage basis at all?

A. Yes; I did figure on the tonnage basis.

Q. How much did your syndicate authorize you to spend in the purchase of ores down there?

A. They discussed acreage prices rather than tonnage prices.

Q. And what was your acreage limit?

A. They wished to obtain, to start with, 500 or 600 acres located in the way I have indicated, and were willing to pay $500 or even more.

Q. How much was your syndicate willing to spend on ore in Birmingham?

A. I do not know. They advised me to get the land.

Q. Did they authorize you to purchase the land?

A. They authorized me to get an option on it.

Q. Oh, to get an option?

A. And the idea was to purchase.

Q. Do you know how much money they expected to spend on it?

A. I know that they wanted an acreage of the minimum size I mentioned.

Q. An acreage of a minimum of 500?

A. 500 or 600, yes.

Q. Can you tell us who were some of the members of that syndicate, Professor Grasty?

A. Douglas H. Gordon, president of the Baltimore Trust Company; de Courcey W. Thom and others.

Q. Do you care to name any of the others?

A. The work was done under their direction. They had other associates.

Q. Do you know the names of their associates?

A. I do not know all of those that they intended to have in with them.

Q. Do you know the names of any?

A. Yes; I know the names of the associates connected with the Baltimore Trust Company. Mr. Baldwin was one.

Q. Give us the names of some more.

A. Mr. William C. Seddon. I do not know who they were going to co-operate with entirely. I was working for them.

Q. Do you know where the Helen-Bess Mine is?

A. I do.

Q. Do you know who owns it?

A. Yes.

Q. Who?

A. Mr. Buck.

Q. Does he own a blast furnace?

A. Yes; at Chattanooga.

Q. But the Helen-Bess Mine does not ship ore to Chattanooga, does it?

A. I think they furnished ore to the Southern Steel at one time.

Q. Is the Helen-Bess Mine connected in any way with any furnace in the Birmingham district?

A. Not that I know of, since the Southern Steel has been in the hands of a receiver.

Q. Is it owned by the Southern Steel Company?

A. I do not think it is, in fact, but the Southern Steel had an option on it. I know that from Mr. Buck himself.

Q. It had an option on it, did it?

A. Yes.

Q. Do you know the Hedona Mine?

A. Yes.

Q. Who owns that?

A. I do not know who owns that.

Q. How far is that from Birmingham?

A. May I consult my notes on it?

Q. Do you not remember?

A. I do not remember the exact distance, no. It is on Red Mountain, I know.

Q. Is it north or south of Birmingham?

A. It is to the northeast of Birmingham.

Q. Can you give us any approximate idea of the distance from Birmingham?

A. No; I cannot. I have a map in which I have all these facts represented.

Q. You have been testifying from your recollection, and I want to test your recollection.

How far is it from the Helen Bess mine?

A. I have notes here to which I can refer——

Q. I do not want your notes. I want your recollection. Do you know?

A. I do not remember the exact distance, no.

Q. Do you know how many working mines are in between the two?

A. I do not remember that. I cannot remember all those mines without some notes.

Q. According to your best recollection, without referring to your notes, would you say they were 25 miles apart?

A. No.

Q. Or one mile, or how far?

A. I would say they were a few miles apart.

Q. How many do you mean by "a few"? As many as five miles?

A. No; I do not mean that. I would not undertake to answer those distances without consulting the map, which is a perfectly proper thing to do, I think.

Q. Do you know where Kewanee mine is?

A. Yes.

Q. Who owns that?

A. I do not know who owns that mine. I do not remember all of those different ownerships. I have my notes on it. I cannot answer without referring to the notes.

Q. Do you remember whether the Kewanee is north or south of Birmingham?

A. It is in Red Mountain. It is to the east of Birmingham.

Q. To the east of Birmingham?

A. Yes.

Q. How far?

A. I do not remember the distances.

Q. Do you mean it is opposite the City of Birmingham?

A. No; I do not mean that.

Q. It is to the northeast then, do you mean?

A. My recollection is that it is more to the east than to the northeast; that it is nearer the east than the northeast. I cannot remember those without a map, Mr. Reed.

Q. Does the T. C. & I. own that mine?

A. I do not remember that. I have the ownerships of all of them shown on a suitable map such as that which you have before you there.

Q. Does it own the Helen-Bess mine?

A. It does not.

Q. Does it own the Hedona mine?

A. I do not remember.

Q. Do you know the Valley View mine?

A. Yes.

Q. Who owns that?

A. I did know, but I have forgotten.

Q. Does the T. C. & I. own it?

A. No; I do not think it does.

Q. What tonnage of ore do you assign to the Helen-Bess mine?

A. I cannot remember without referring to my notes. I cannot remember all those details.

Q. You testified before the Stanley Committee, did you not?

A. Yes.

Q. I call your attention to your testimony at page 5298 of the record of that hearing.

"By Mr. Gardner:

"Q. So that if you take in the extremest possibility that seems to you reasonable at the present time, the United States Steel Corporation has 75 per cent of the ores, but of the ores

which everyone concedes to be commercially available at the present time they own 50 per cent?

"MR. YOUNG: 52 or 53.

"MR. GARDNER: No, he said 52 or 53, reasonably.

"MR. CRASTY: I meant 52 or 53 per cent."

How does it happen that the percentage has gone up so much since then?

A. I can explain that very easily and satisfactorily, I think.

Q. Will you please?

A. I said that the percentage here was between 52 and 53 per cent, and I said in answer to Judge Dickinson's question that if I took the lower reaches of Shade's Creek the percentage was in that neighborhood.

Q. In what neighborhood?

A. I said 55 per cent. I have gone over my figures and I find it is 55 per cent, nearer than 52 or 53.

Q. Have you gone over your figures since you testified before the Stanley Committee?

A. Yes.

Q. Have you considered the Helen-Bess?

A. Yes.

Q. How much did you allow for it?

A. May I consult my notes?

Q. I would like it from recollection, if you can.

A. I said hundreds of acres.

Q. Have they hundreds of acres?

A. No, they have not, but I said I had to consider hundreds of acres, thousands of acres.

Q. And you cannot carry all the details in your mind?

A. I cannot remember that detail.

Q. Now, if you limit your estimate to one mile from the outcrop what percentage would the Tennessee Coal & Iron Company own in that same district, from Spark's Gap to Morrow's Gap?

A. That would call for an entirely new estimate.

Q. What would it be?

A. I cannot make that offhand.

Q. It would not be over 33 per cent, would it?

A. I do not know; I cannot state it without having made an estimate myself.

Q. And yet you were only considering outcrop ore yourself when you wanted available ore?

A. I was considering outcrop ore in order to avoid shaft mining.

Q. If the Tennessee Coal & Iron Company is to be judged by the same standard that you set for yourself, this percentage shrinks to about 33 per cent, does it not?

A. I do not mean that that shaft ore should not be considered as good and available ore, as a matter of course.

Q. But you were not willing to buy it?

A. I was not to buy it; I was simply representing other parties.

Q. If you will just consider the kind of ore you were willing to buy for the other parties, what percentage of the ore in that district did the Tennessee Coal & Iron Company own in 1907?

A. I would not change this estimate. I consider that drawing a line in alignment with the lower reaches of Shade's Creek, it is a perfectly correct estimate, and that ore in there is available.

Q. It is available, but you were not willing to buy it; is that what you mean?

A. I was not in a position to buy it. It could not be bought in there, as you will see by consulting the map of what the Tennessee Coal & Iron Company owns and other ownerships.

Q. Did you consider buying the Helen-Bess mine?

A. No.

Q. Did you consider buying the Hedona mine?

A. No. The Helen-Bess mine was off the market.

Q. The Tennessee Coal & Iron Company did not have it, did it?

A. No, but the Southern Steel did.

Q. It was owned by the Southern Steel Company, was it?

A. It was not owned, but Mr. Buck stated that they had an option on it, because he was an officer in the company and did not care to sell it to them.

Q. Did you consider buying the Kewanee mine?

A. No.

Q. Who owned that?

A. I do not know, but I examined all the ownerships in determining what the ownerships were, and if that ownership was not sufficient and did not lie properly on the outcrop, I did not consider it.

Q. The Kewanee mine is an outcrop mine, isn't it?

A. Yes, but if it owned land lying at the right place and carrying the proper tonnage, the ownership map would have shown that. The ownerships are of record.

Q. Are we to understand that you did not consider the Kewanee mine, because it did not own enough land?

A. Both those two questions would be taken into consideration, the character of the ore as well as the land.

Q. What was the character of the Kewanee ore?

A. It is hematite ore.

Q. It is good ore?

A. It is rather high in silica. So is the Helen-Bess.

Q. How high will they run in silica in percentage?

A. I have analyses.

Q. Do you remember?

A. I remember that right in there the percentage of silica is high, and we were not looking for an ore where the percentage of silica was high, because we had an ore in which the percentage of silica was already high.

Q. I see. Now, these mines are well to the northeast of Birmingham, are they not?

A. The Helen-Bess I think is slightly to the northeast.

Q. About how far?

A. I do not remember the distances exactly from Birmingham; it is not a great distance.

Q. You can remember the character of the ore in this vicinity, but you cannot remember where the vicinity is; is that the point you wish to make?

A. I wish to make the point that I do not carry those exact locations with reference to distances. I know it is off on Red Mountain from Birmingham, but the exact direction and the exact distance I am unable to state.

Q. All these mines are off on Red Mountain from Birmingham, are they not?

A. That is to the east or northeast.

Q. Professor Grasty, your attention was called before the Stanley Committee to the estimate that Mr. Burchard had made to the United States Geological Survey, page 5299, and in that estimate it was stated that the Tennessee Coal & Iron Company owned 37½ per cent of the commercially available ore; and I understood you to assent to those figures, because I find you answering:

"I think that Mr. Burchard's estimates are very good and accurate estimates."

Now, how do you reconcile that with your other statement of 52 per cent, and your estimate to-day of 70 per cent?

A. Does Mr. Burchard state—

MR. DICKINSON: I think you had better not ask him questions. Better answer his questions.

(By request, the stenographer repeated the question.)

THE WITNESS: I do not think I quite understood your question at that time.

By MR. REED:

Q. What did you understand me to mean in quoting Mr. Burchard's figures, showing the Tennessee Coal & Iron Company to own 37½ per cent, and what do you mean by your answer that you thought Mr. Burchard's estimates were very good and accurate estimates?

A. I had in mind in answering your question then estimates of ore tonnage, without reference to what Mr. Burchard had credited the Tennessee Coal & Iron Company with owning. I did not know that he has credited the Tennessee Coal & Iron Company with 36.8 per cent, and that is the reason I did not understand that question.

Q. I call your attention then to this question and your answer:

"MR. REED: Yes, acreage; and in tonnage the Tennessee Coal & Iron Company has 131,000,000."

THE WITNESS: Where is that?

MR. REED: Page 5299.

(Continuing). "The independent furnace companies have 109,000,000 and private owners 117,000,000, so that of the ore which Mr. Burchard considers to be immediately available

the Tennessee Coal & Iron Co.'s percentage is 36.8. I would like to know what Mr. Grasty has to say about those figures.

"MR. GRASTY: I think that Mr. Burchard's estimates are very good and accurate estimates, and I want to say this, that in looking at a note here I find that I have included in this estimate of what the Tennessee Coal & Iron Company own some tonnage that they own at Compton and some tonnage that they own at Springville.

"MR. REED: And that is outside of this district?

"MR. GRASTY: That is outside of this district," etc.

Have you any explanation to make of the apparent inconsistencies between these estimates of that time and the estimates you are making to-day?

THE WITNESS: Yes.

By MR. REED:

Q. What is it?

A. When I say outside of this district, I had in mind Shade's Valley. I don't mean out of the 25-mile radius of Birmingham, for Springville and Compton are both included in that district, but I do mean outside of Shade's Valley. With regard to that question there my reply is that I understood you to mean at that time that you were discussing Burchard's estimate of that district down to the line that he draws for available ores.

Q. And what is that?

A. That is in alignment with Shade's Creek.

MR. DICKINSON: Have you finished the explanation?

THE WITNESS: Yes.

By MR. REED:

Q. Mr. Burchard's estimates then contain Shade's Creek, in figuring on what is presently available ore?

A. Available ore. His map and his report will show that. That is what I had in mind.

Q. And you agree with those figures which I quoted to you and which I have just read to you again, which were stated by Mr. Burchard?

A. I agree with the figures as given in Mr. Burchard's re-

port, and my understanding was that you were quoting those figures.

Q. Is it your present understanding that I quoted them correctly, or do you think I misquoted them?

A. I do not know where he says anything about that available tonnage of the Tennessee Coal & Iron Company, about 36.8.

Q. Do you agree or disagree with it?

A. I disagree with it.

Q. You disagree with it?

A. I disagree with the figures of the tonnage of the Tennessee Coal & Iron, about 36 per cent, down to the alignment of the lower reaches of Shade's Creek. I said it was 55, and if you take it over to the front of Shade's Mountain it was nearer 70 per cent.

Q. And if you were to learn that Mr. Burchard only went a mile from the outcrop, or 6,000 feet at the outside, would you disagree with this estimate of 36.8?

A. As I say, I cannot answer what would be the tonnage of the Tennessee Coal & Iron Company at a distance different from that I have already estimated it without re-estimating the whole thing. It would be something that could not be done offhand.

MR. DICKINSON: Would you mind my asking just for information just a question here? Do you understand that Mr. Burchard ever gave any such tonnage as that in his report, that he separated the tonnage, assigning any special tonnage to the Tennessee Coal & Iron Company, or that he only gave the acreage, some 14,800 acres, and then gave the entire tonnage for those acres, and that he did not assign any particular tonnage to the Tennessee Coal & Iron Company? How do you understand that?

MR. REED: I do not know whether that estimate was made by Mr. Burchard or not. My point was that Mr. Grasty agreed with the estimate at that time, and does not agree with it now.

MR. DICKINSON: I would like to try and find out. I can see where Mr. Burchard gave the tonnage and the entire acreage, and I want to know whether this estimate of 131,-

000,000 was made by calculation, or whether you got it from Mr. Burchard.

MR. REED: I did not know what the origin of that was at the time.

MR. DICKINSON: And whether or not that was based upon distribution, upon the idea of uniform tonnage to acreage?

MR. REED: I do not know; I can look that up and let you know.

By MR. REED:

Q. You have testified that the manufacturing costs of Alabama are about $2.00 per ton less than those of Virginia. It is a fact, is it not, that freight rates from Virginia to the markets in which such iron is commonly sold are about $2.00 less than that of Alabama, and that that quite offsets the advantage that Alabama has in the costs of production?

A. I think that is all correct, but the Virginia iron industry is not in a very prosperous condition, as you perhaps know.

Q. That was not my point. I simply wanted to bring out the matter of the freight rates. You have testified also that the Alabama red ores are as good as the Lake Superior ores for manufacturing open hearth steel?

A. Yes.

Q. How do they compare in iron content?

A. They contain less iron than the Lake Superior ores, if you compare them entirely on the basis of iron content.

Q. I am asking first as to iron content. Now, just answer that question.

A. They contain less iron than the Lake Superior ore.

Q. What is considered a fair percentage of iron content in Alabama ore?

A. About 35 per cent I should say would be the average.

Q. And what percentage of iron is necessary to make the Lake Superior ore commercially available?

A. What per cent is necessary to make Lake Superior ore commercially available?

Q. What per cent of iron must Lake Superior ore have in order to be commercially available at the present time?

A. Well, the percentage is—it is not very desirable after it gets under 50 per cent.

Q. You mean dried or natural?

A. I mean on the basis of analysis, 212 degrees Fahrenheit.

Q. 212 degrees Fahrenheit, 50 per cent?

A. As a basis of analysis.

Q. What would it be naturally?

A. That would depend upon the amount of water.

Q. About how much water does that ore up there run?

A. It varies from 4 per cent up to 10 and 12 per cent; it depends upon how much is limonite.

Q. Why cannot the Alabama ores be used in the Bessemer process?

A. Because of phosphorus.

Q. How much phosphorus do they carry?

A. They vary in content of phosphorus, and they contain as much as—I have known cases where they contained a great deal of phosphorus, but the average is prohibitive for the Bessemer.

Q. What is the average in figures?

A. Oh, about one-tenth of one per cent, or less than that.

Q. One-tenth of one per cent?

A. Yes.

Q. What is the limit of phosphorus that will allow the ore to be used in the manufacture of Bessemer steel?

A. If you have a 50 per cent ore, then it would be five-thousandths of one per cent.

Q. Five one-thousandths of one per cent?

A. Yes.

Q. And ore containing six one-thousandths of one per cent phosphorus, 50 per cent iron, cannot be used in the Bessemer Steel Works, is that what you mean?

A. I mean to say that that would be on the very edge. The specifications call for a thousandth portion of the percentage of iron.

Q. I forgot to ask you about the shaft that you said would be necessary to run for that iron. How much does it cost to sink a shaft of the character that would be necessary there, about how much per foot?

A. I do not know, Mr. Reed. I am no authority on the

sinking of shafts. I have inquired of engineers as to the cost and found—

Q. I am not asking you what you learned from engineers, but I want your own knowledge on the cost of sinking shafts?

A. I know very little.

Q. Do you know anything?

A. I know something about the cost, but I do not know enough to be an authority on that.

Q. Tell us what you do know. Did you ever hear of any shaft costing from $500 to $600 per foot to sink?

A. I say I do not know as to the cost. What depth shaft are you referring to?

Q. A shaft of any depth.

A. Well, the question of cost will vary, of course, with the depth.

Q. I will ask you to assume any depth, from 10 feet up to 10,000. Did you ever hear of a shaft costing from $500 to $600 per foot anywhere in the world through any kind of material?

A. No.

Q. Did you?

A. No.

Q. Then this is a pretty expensive shaft?

A. That, of course, would refer to the equipment of the shaft and operation of the shaft, equipment of the mine.

Q. It would include the opening of the mine, too?

A. Yes.

Q. How would it compare with the necessary equipment and opening expenses of an outcrop mine, where you had to put in your inclines?

A. It would be enormously greater, because I figured that you begin to take out your ore at once, and you have a higher grade to work on, because the outcrop ore is soft and contains a higher content of iron.

Q. Did you ever see an analysis of these shafts for that iron?

A. Yes, I have.

Q. Obtained by drill?

A. Yes, I have seen the drill records.

Q. How do they compare in iron content with the outcrop ore?

A. You cannot compare, Mr. Reed, outcrop ore with hard ore, yet the mines in the Birmingham district are working on hard ore; it compares favorably with hard ore. The outcrop has been largely worked out, the soft ores.

Q. There is hardly any more of the outcrop ore left, is there?

A. Very little, very little of the soft ore. You refer to when the bed reaches the outcrop.

Q. I am referring to any kind of mines that any one would have to put in if they went to Birmingham and started in to work to-day on what is left in Red Mountain. It would cost as much to equip an iron outcrop mine or one near an outcrop as it would to equip an open mine in Shade's Valley?

A. Not at all.

Q. Do you know what it will cost, to your knowledge?

A. You can equip a plant for $25,000 or $30,000 and prepare to work the hard ore. So far as the outcrop is concerned, most of the outcrop ore, that is the soft ore, in Alabama, has been worked out with the equipment of the pick and shovel and a wagon.

Q. Yes, we understand that.

How do the Lake Superior Bessemer ores run in phosphorus, Mr. Grasty?

A. I do not know.

Q. Do you know where the Menominee Range is; in what state it is?

A. I do not remember the state. I know the location of those properties with reference to Lake Superior; that they occur in a belt surrounding Lake Superior, but as to the state, I have forgotten.

Q. You know it is in Minnesota, do you not?

A. I do not know whether it is or not.

Q. You know that it ships by Lake Superior, do you?

A. That is my understanding, from reports of the U. S. Geological Survey.

Q. What reports of the United States Geological Survey told you that the Menominee Range shipped over Lake Superior?

A. I have not quoted the Geological Survey as stating that they shipped over Lake Superior.

Q. That is just what you told us, that the Menominee Range shipped over Lake Superior.

A. The ores of the Lake Superior district, Mr. Reed, do ship most of their ore by water—there may be exceptions, but so far as I know there are none—over the lakes.

Q. Over what lakes?

A. Over Lake Superior and the intervening lakes, down to the nearest point to Pittsburgh and points along the lake ports, as they are known, where the prices are quoted on ore.

Q. If ore were mined in the Menominee Range and were to be taken to Gary, over what lakes would it travel?

A. I do not know what would be the route of transportation.

Q. If ore were to be mined in the Marquette Range to be taken to Gary, Indiana, over what lakes would it travel?

A. Over all the intervening lakes, Lake Ontario, and so on down through the Straits of Saulte Ste. Marie, down to the nearest port.

Q. Will you not tell us just the route it would take? It would start on Lake Superior, you say, and then on Lake Ontario, and then through the Saulte Ste. Marie, and then over what water would it go?

A. I do not know. It would go by water transportation.

Q. Yes, but I would like to get the route. Distance makes a great difference in the value of ore to the furnace owner, does it not?

A. Of course.

Q. Let us just follow this Marquette ore on its route to Gary, Indiana. It starts on Lake Superior, you said, and then it goes over Lake Ontario, and then through the Saulte Ste. Marie, and then on what lake or body of water does it pass?

A. I do not remember further than that it goes by water.

Q. Over what lake does it pass last?

A. I do not remember the last. Lake Ontario?

Q. I am asking you.

A. I say I don't know.

Q. Now, take the Gogebic Range. What state is that in?

A. I am not familiar, Mr. Reed, with the Lake Superior district, as I have stated, further than with the published reports on that district, and with the analyses of the ores and the character of those ores as given in different publications.

Q. I see.

A. And the cost of the ores as quoted.

Q. I am asking about the familiarity that you have gained, then, from those publications. Is the Gogebic ore a hard ore or is it a steam shovel ore?

A. These quotations are concerned rather with the chemical composition than with the point of mining—what is the value of the ore, what is its composition, rather than from what particular district it comes and what is the price of it. When it comes to that I can answer questions.

Q. Is there any difference in the cost of mining open-pit ore and hard ore?

A. Open-pit ore in the Lake Superior district?

Q. Yes.

A. There is, if I remember correctly, because you have a steam shovel in there, as against a non-steam shovel proposition in the hard ore of the Birmingham district.

Q. So that the ore that can be mined with steam shovels is more desirable, and is preferable?

A. It depends upon where it is.

Q. Suppose it is in the Gogebic Range. What percentage of the ore of the Gogebic Range can be mined with a steam shovel? Can you tell us that?

A. I do not know. It depends upon delivering it at the furnace.

Q. I do not think you understood me. What percentage of the Gogebic ores is mined in open-pit mining?

A. I do not know.

Q. Can you give us any idea, from your studies of these Geological Survey reports?

A. I am not familiar with the Lake Superior district by first-hand information, but I am with the Birmingham district. I know the costs there.

Q. I understood you to compare these ores, and to tell us that the Alabama hard ores were as favorable for open-hearth steel production as those of the Lake Superior district?

A. That is based on the question of selling price and chemical composition, without reference to the point from which they came.

Q. Oh, yes; but then I also understood you to say that nowhere else in the world could ores be assembled as cheaply as they can at Birmingham; but I do not find the knowledge of the cost of assembly and the method of assembling in the Lake Superior district that I expected to find.

A. When the Lake Superior ores sell and are quoted as selling for three and over three times the price of the Alabama ores, and the composition of the Alabama ores and the Lake Superior ores is known, and there are market quotations on ore, just as there are stock quotations on stocks, it is possible to make a comparison based on those figures.

Q. I see.

A. That is the basis of my comparison.

Q. Then you are basing your statements as to the ease of assembly on the market quotations of the ore?

A. On the market quotations of the ore and the cost of the ore at the furnace.

Q. Yes. I also understood you to testify that the Gary plant in Indiana had the advantage over Pittsburgh because it was closer to the raw materials.

A. Yes. It has.

Q. You could not base that statement on the market quotations of the ore, could you?

A. The conditions at Gary are more favorable for cheaper ore than at Pittsburgh, I should say.

Q. What part of Indiana is Gary in?

A. It is along the lake shore of Indiana.

Q. What lake?

A. Lake Ontario—or Lake Erie, one of the two. I forget which.

Q. Then why does the ore have to go through Saulte Ste. Marie, after you put it on Lake Ontario, to get to Gary?

A. Maybe I have transposed my lakes. I know it is along the lake.

Q. Coming back to your comparison of Lake Superior and the Alabama ores, Mr. Grasty, how many tons of coke are required to smelt a ton of Alabama ore?

A. About 3,500 pounds or 3,600 pounds.

Q. That is about a ton and three-quarters?

A. Yes.

Q. And the Alabama ore contains a little over 35 per cent of iron, does it not?

A. Yes. It also contains other ingredients which would affect its value.

Q. So that it requires about seven tons of coke to produce one ton of pig iron in the Birmingham district?

A. How many tons of coke?

Q. Seven, if my arithmetic is correct.

A. No. I said it required 3,500 pounds to produce a ton of pig iron.

Q. Then I guess my arithmetic is not correct. It requires about five and a half tons, does it not, to produce one ton of pig iron?

A. How do you mean? 3,500 pounds of coke—

MR. DICKINSON: You are as bad on arithmetic as he is on geography, Mr. Reed.

MR. REED: You would not think that, Mr. Dickinson, if you listened closely.

By MR. REED:

Q. You testified that it took 3,500 pounds of coke to smelt one ton of Alabama ore, did you not?

A. 3,500 pounds of coke?

Q. To smelt one ton of Alabama ore.

A. I meant a ton of pig iron.

Q. Oh, you are changing it.

A. To make a ton of pig iron.

Q. That is what you mean?

A. Yes.

Q. About 3,500 pounds?

A. Yes.

Q. How many pounds of coke does it take to make one ton of pig iron at Pittsburgh of Lake Superior ore?

A. It requires, to make one ton of pig iron, from a ton to one and one-tenth tons.

Q. And how many tons of limestone are required at Pittsburgh in the smelting of one ton of pig iron?

A. It would require approximately from 1,000 to 1,200 pounds.

Q. Did you ever see the cost sheet of a furnace in Pittsburgh?

A. Not of a Pittsburgh furnace, no.

Q. Did you ever see the cost sheet of a northern furnace in any district?

A. I have seen the cost sheets made by men who have been connected with those furnaces, yes.

Q. What furnace?

A. Northern furnaces.

Q. What furnaces, Mr. Grasty?

A. I have gathered a great deal of data on that through Mr. J. J. Porter.

Q. What furnaces?

A. Pittsburgh furnaces; an average of the Pittsburgh furnaces.

Q. Any particular furnace?

A. No. An average of the district. It would be unfair to compare one of the furnaces.

Q. That was an average that was made of the whole district?

A. Of the whole district.

Q. Did you ever see similar figures for Birmingham?

A. Yes, sir; I have seen them at first hand.

Q. At first hand?

A. Yes.

Q. Did you ever see the Tennessee Coal & Iron Company's cost sheets?

A. I had the opportunity to get that, too.

Q. Where did you see those?

A. In connection with the test made on the gray ores of Alabama and the question of cost was involved there. I have those figures.

Q. Where did you see them? Where did you get them?

A. Mr. Porter and I conducted the test in connection with Mr. Williams.

Q. Where?

A. At Bessemer.

Q. Whose furnaces?

A. The Tennessee Coal & Iron Company's furnace.

Q. They gave you their cost sheets, did they?

A. We had access to that information.

Q. When did you get that?

A. Mr. Porter was in actual charge of the operation, and the figures that he got were accessible to me. Also, I have the cost of the Sloss Company and other companies down there.

Q. I find on page 5307 of the Stanley Committee record, that you made the following statement to the committee (reading):

"If the Chairman will permit me, I want to make a correction of my testimony in regard to the tonnage of the Tennessee Coal & Iron Company. I found that I added the same figures twice this morning. I said the Tennessee Coal & Iron Company owned about 200,000,000 tons of available ore. I will put that at 220,000,000 tons of available ore and add 200,000,000 more of probable available ore, so close to available that it should be included with it, I think; which would be 4.2 to 0.6, which would be 70 per cent of the total of the district. I put it that way so that does not include the possible tonnage which is not considered probably available even."

Am I correct in understanding that you included in that revised estimate the ore back to the base of Shade's Mountain?

A. No, sir.

Q. How far back did you go?

A. That was in the alignment with Shade's Creek, the lower reaches of Shade's Creek. As to the exact distance of that from the outcrop, we shall have to have a map, as I am very poor on geography.

Q. As to that phrase, "the alignment of the lower reaches of Shade's Creek," I do not know that I quite understand that. Shade's Creek runs east and west down near Sparks Gap, does it not?

A. I know it does.

Q. Do you mean to take the alignment of that?

A. No. Shade's Creek follows along the foot of Shade's Mountain, and then makes a long detour and comes in near Red Mountain; and then it follows southwestward, and perhaps beyond that it turns to the west, as you have stated.

Q. Now, Mr. Grasty, can you not tell us any better than that expression "the lower reaches of Shade's Creek?" It is a very wriggly creek.

A. I know. If you will let me have that map I can tell you.

Q. I want you to tell us without the map.

A. I mean Shade's Creek runs parallel, roughly, to the front of Shade's Mountain; then it makes a long detour and comes in near Red Mountain; after that long detour it parallels Red Mountain for a distance.

Q. Yes.

A. And runs in a generally southwestward direction.

Q. You mean to exclude all of that long detour; is that the idea?

A. I mean that I do not include that long detour or a portion farther to the east. If we include the portion farther to the east, parallel to Shade's Mountain, then the Tennessee Coal & Iron Company in that ownership is credited with about 70 per cent of the total; whereas if it is, as I have taken it here, along the lower reaches of Shade's Creek it is about 55 per cent of the actually available ore. This question you have asked me has brought in the question of probably available ore, and if that is included, then that increases the percentage of ownership of the Tennessee Coal & Iron Company in this area which is nearer to the outcrop.

Q. And that brings it up to 70 per cent?

A. That will bring it up to 70 per cent.

Q. And in that estimate you are not figuring that the big seam is workable for more than nine feet at any point?

A. At certain points it is twelve feet.

Q. And at certain points up to twelve feet?

Mr. Dickinson: I think he said that in his testimony before.

By Mr. Reed:

Q. But not at any place workable for more than twelve feet?

A. Not more than twelve feet.

RE-DIRECT EXAMINATION.

By Mr. Dickinson:

Q. As to the question of the cost of sinking a shaft, is there anything more involved in mining by shaft than merely putting down the shaft? How about the entries, extending them?

A. They have to be developed.

Q. Is that an expensive part of the proceeding?

A. That is an expensive part of the proceeding.

Q. And the hoisting machinery is an expensive part?

A. It is.

Q. Will you state whether or not you included all that in your estimate?

A. I included all of that.

Q. Just one more topic. You were asked about your testimony before the Stanley Committee, a question on page 5299, and the estimate made by Mr. Burchard. Do you know of any estimate made by Mr. Burchard in which he assigned a particular tonnage to the Tennessee Coal & Iron Company, as for instance, 131,000,000 tons?

A. No, sir.

Q. Do you know of any estimate by which he assigned 109,000,000 tons to other companies, and 117,000,000 to private owners?

A. No, sir.

Q. What is the extent of your understanding that he made estimates? That is to say, that went beyond the acreage and estimated tonnage of the entire acreage?

A. I understood by that, whether Mr. Burchard's work was good and accurate, and I understood it was.

Q. Did you mean to say by that that he had assigned those amounts that were set out in that question that I just called for, to these companies?

A. No, sir.

Q. If there were 358,400,000 tons of ore on 14,800 acres, from your knowledge of that region, would that be distributed proportionately over that acreage, or would it vary?

A. It would vary very much indeed.

Q. Why?

A. Because the thickness of the ore is not the same at all points.

MR. DICKINSON: That is all.

MR. LINDABURY: That is all.

MR. REED: I have one more question.

RE-CROSS EXAMINATION.

By MR. REED:

Q. You say one reason these shaft mines cost so much is because you have to put in the entries and install hoisting machinery?

A. Yes, and a mine along a ridge has to be developed by a system of drifts into the ore.

Q. These drifts all go through the ore, do they not?

A. Yes.

Q. And in mining from an outcrop you have to put in entries, too, do you not?

A. That is true.

Q. And they go through the ore?

A. Yes.

Q. And in both cases you get out ore as you run in your entries?

A. But in one case you have an increase accumulating on a very large investment, and in the other you have not.

Q. In both you have to put in hoisting machinery, do you not?

A. Yes.

Q. In the outcrop mines of ore, the ore tilts up about 30 degrees slope?

A. In some places it does and some it does not.

Q. Do you know of any place where it is level?

A. No, I know of no place where it is absolutely level over any considerable distance.

Q. There is no place where hoisting machinery is not necessary, is there?

A. I know of no place in the Birmingham district as we have restricted it, where it is unnecessary.

MR. REED: That is all.

MR. DICKINSON: That is all.

MR. COLTON: I should like very much to finish with Mr. Scranton this afternoon, if it is agreeable to you. I suppose the direct examination will take an hour or more.

MR. LINDABURY: That would be half past five, besides the cross.

MR. COLTON: I do not think the cross examination would be very long.

MR. REED: Speak for yourself, John.

MR. COLTON: I calculated that we could finish by about six o'clock, and Mr. Scranton has been here four different days.

MR. LINDABURY: Would it put you out very much if we did not go on this afternoon, Mr. Scranton?

MR. SCRANTON: Yes, I calculated to get away this afternoon.

MR. COLTON: I told him I could let him get away.

MR. LINDABURY: Why didn't you do it?

MR. COLTON: Mr. Grasty took longer than we expected.

MR. REED: We were sailing on uncharted seas at that time.

MR. COLTON: Why did you go by the water route?

WALTER SCRANTON

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. COLTON:

Q. How long have you been in business?

A. I have been in the steel business—I was vice-president of the Scranton Steel Company in 1881, and remained vice-president of it until the consolidation of the Scranton Steel Company; the Lackawanna Iron and Steel Company in 1891, the corporation known as the Lackawanna Iron and Steel Company. I was elected vice-president of that, and was elected president in 1893, and remained president until the latter part of 1903, and then we took out a charter under the laws of

this state of a corporation called the Lackawanna Steel Company, and I was president of that company.

MR. REED: For how long?

THE WITNESS: From 1881 to 1903.

By MR. COLTON:

Q. What kind of rails were manufactured by the various companies with which you were connected?

A. Bessemer steel.

Q. Bessemer steel of approximately what weight?

A. We made from 50 to 100 pounds to the yard.

Q. Were those standard or non-standard rails?

A. They were standard rails.

Q. Then it is primarily with the standard rail business that you are familiar?

A. Yes, sir.

Q. Do you know what companies went into the Illinois Steel Company?

A. I should say the North Chicago Rolling Mill Company, of Joliet, and there was another one, I think, the Union, but I cannot remember.

Q. Were those companies that went into the Illinois Steel Company engaged in the manufacture of standard rails?

A. Yes.

Q. State whether or not those companies were in competition with one another.

A. They were until they consolidated.

Q. State whether or not they were in interstate competition with one another.

A. Yes.

Q. Do you recall the Cleveland Rolling Mill Company?

A. No, I do not. That was a company really before my day.

Q. If it ever manufactured rails, it was before your day?

A. Yes. The Cleveland Rolling Mill Company was one of the old mills, one of the first mills that went into the manufacture of Bessemer steel.

Q. And it was not manufacturing steel rails while you were familiar with the rail business, was it?

A. No, sir.

Q. Either standard rails or other rails?

A. Well, they may possibly have manufactured light rails.

MR. REED: You only want Mr. Scranton's knowledge?

MR. COLTON: I only want your knowledge, Mr. Scranton, as gained in the business.

By MR. COLTON:

Q. Do you recall the Troy Steel & Iron Company?

A. Yes, sir.

Q. Did they ever manufacture standard rails?

A. Yes.

Q. At about what time was that company engaged in manufacturing rails?

A. I know that they were in competition with the Carnegie Steel Company along, I should think, from 1881 up to possibly 1885, and perhaps later. If you will allow me, you know I have been out of this business for practically ten years.

Q. I understand that. Were they engaged in manufacturing rails subsequent to the formation of the Illinois Steel Company?

A. Afterwards, no, I think not.

MR. REED: What years did you give for the Troy Steel & Iron Company, from 1881 to 1885, you said?

THE WITNESS: I said that they were making steel rails at Troy along in 1881.

MR. REED: Until when?

THE WITNESS: I should say until 1885. I know that they were in competition, or we were in competition with them selling in New England. That is the reason I recall that.

By MR. COLTON:

Q. Do you know what put that company out of business?

MR. REED: Of your own knowledge.

THE WITNESS: They could not compete on account of location; they could not compete with other mills.

By MR. COLTON:

Q. Location in regard to getting ore, or location in regard to selling, or both or neither?

A. On account of location and for assembling material

and distributing the finished product. The costs were too high; they could not compete.

Q. Did they go out of business before the Lake Superior ores were brought into use and began to be used in considerable quantities?

A. I should think yes.

Q. Before the Lake Superior ores began to be used?

A. I should think so, yes.

Q. Including the Old Range ores?

A. All the Lake Superior ores, because I remember they used to bring all their ore from the Lake Champlain district and Crown Point.

MR. REED: You certainly do not want to keep Mr. Scranton to the statement that the Troy Steel Company went out of business before the Lake Superior ores were generally used?

THE WITNESS: I do not want to be committed.

MR. COLTON: Not if he does not remember. I do not mean to commit him to that statement.

By MR. COLTON:

Q. I want to know, when did the Lake Superior ores, according to your recollection, begin to be used to any extent? I will withdraw that question and ask first where did the Scranton Company get its ores?

A. We got our ores also from the Lake Champlain district, and from the Cornwall-Lebanon district in Pennsylvania; also some ores from the Lake Superior region.

Q. Since 1901 do you know whether the Lackawanna Steel Company has gotten its ores to a larger extent from the Lake Superior district than it did formerly?

A. Yes, yes; certainly.

MR. COLTON: I do not think Mr. Reed heard that statement, did you?

MR. REED: You asked him whether the Troy Steel Company since 1885, went out of business before they were generally used, and your own records show that they were used in 1870, and you are putting him in a bad light.

MR. COLTON: That is the reason I asked him where he got his ores from.

By MR. COLTON:

Q. Do you recall the Allegheny-Bessemer Steel Company?

A. I have an indistinct recollection of that. I think that was a concern that W. G. Parke was interested in.

Q. Was that engaged in the manufacture of rails for interstate commerce prior to the time it was absorbed by any other company, if ever it was absorbed by any other company?

MR. REED: Objected to for the reason that the witness has just stated that he has no more than an indistinct recollection of the company.

MR. COLTON: Will you repeat the question and let him answer?

(The stenographer repeated the question.)

THE WITNESS: It was engaged in the manufacture of steel rails.

By MR. COLTON:

Q. In interstate commerce?

A. Well, I should say they were in the market and sold rails all over the country the same as any other mills.

Q. Do you recall what company they went into?

A. I think the Carnegie.

Q. Do you recall the Worcester Steel Works or the Washburn Iron Company as manufacturing rails?

A. No, sir; I do not.

Q. They had a mill that was out of date; it was not in active competition with other mills, was it?

A. It was a wire mill.

MR. REED: You are getting out of date.

MR. COLTON: They were in the same pool in 1887, and in the Standard Oil case they went back to 1873, you may recall.

MR. REED: Well, that is some wickedness that we did not invent.

By MR. COLTON:

Q. Did your company become a member of any rail pool at any time in the course of its history?

A. Yes.

Q. When, approximately, was the first time your company ever became connected with a rail pool that you know of yourself?

A. I think the steel company was a member of a rail pool along about 1888 or 1889; about that time.

Q. Will you name as many different companies in that rail pool, at or about 1890, as you can recollect?

A. 1890?

Q. About that time. I am not particular.

A. There were the Carnegie, and the Cambria, the Pennsylvania and the Illinois; I do not know whether it went under that name or not at that time, but the Illinois and the Lackawanna. We would be the Lackawanna Iron & Coal Company there, because they had not consolidated. You see you are taking three different corporations up with me at different periods, and you have got that Lackawanna Iron & Coal Company.

Q. Were those companies that you have named, and their successors during the nineties in competition with one another except in so far as that competition was restricted by pools?

MR. REED: He has not testified that the competition was restricted by pools.

MR. COLTON: If it was restricted by pools.

THE WITNESS: Will you ask that question again?

(The stenographer repeated the question.)

THE WITNESS: They were.

MR. REED: You say competition was unrestricted except in so far as it was restricted.

MR. COLTON: By pools.

By MR. COLTON:

Q. Was it restricted at all by pools during that period?

A. I do not know that I understand your question. Restricted by pools? What do you mean, restriction as to production?

Q. Limitation either as to powers of production, limitation as to the lowness of the price that you might charge, or as to the amount of tonnage you might manufacture without

paying a penalty; either of those I call restriction of commerce.

A. Let us hear that question again.

(The stenographer repeated the question.)

THE WITNESS: It was restricted.

By MR. COLTON:

Q. Assume that this expression appears in the minutes of one of the companies engaged in this pool:

"For my part, I do not wish to play second fiddle in the rail business any longer. I get no sweet dividends out of the second fiddle business, and I do know that the way to make even money dividends is to lead. I consider collecting $2.50 from the Lackawanna and the Illinois Central Steel Companies for rails that we should have made very unprofitable business indeed, both for the mind and for the body, for both."

Can you explain to me what is meant by collecting $2.50 from the Lackawanna Company or from the Illinois Steel Company, what would be the meaning of that if used in connection with a rail pool?

MR. REED: I object to that question as incompetent, improper in form, as leading and as based on a hypothesis.

MR. COLTON: That is not in evidence?

MR. REED: Not in evidence so far as I know.

MR. COLTON: It is in evidence.

MR. REED: It is not a proper subject for a hypothetical question anyway, or expert opinion.

(The question was repeated by the stenographer.)

MR. REED: That is objected to further because the witness cannot possibly know what this indefinite per cent which is supposed to have originated this quotation could have meant, by the language that is used.

MR. COLTON: Assume that it was—do you want the name? I do not see that it makes any difference.

MR. REED: I do not want any part of the question.

MR. COLTON: Assume that it was Andrew Carnegie writing that statement in connection with a rail pool, what did he mean?

Mr. Reed: I object to that, because the witness is not a proper interpreter for the remarks of Mr. Andrew Carnegie. The question is improper. Go on, Mr. Scranton, and tell us what Mr. Carnegie was thinking of.

The Witness: I do not understand what he means as to the price, the $2.50, any more than it might by $5.50.

By Mr. Colton:

Q. Well, if it were $5.50 or $2.50.

A. Or $10.50; it may mean some—undoubtedly it must refer to some penalty that the company was obliged to pay; something to that effect.

Q. There were penalties in the rail pools?

A. There were certain penalties, yes.

Q. In what case did you have penalties in a rail pool; under what circumstances were penalties levied?

Mr. Reed: You are speaking now of what period?

Mr. Colton: During the period from 1890 up to the time of the first dissolution of the rail pool.

Mr. Reed: I object to that, because it has not yet been shown that there was any rail pool during that period, so far as this witness knows, and it has not been shown that it was dissolved, so far as this witness knows, if there was any. Therefore, until these facts are shown, I object to it.

By Mr. Colton:

Q. Was there a rail pool during the early nineties?

A. Yes, sir.

Q. And did that rail pool or not continue during the greater part of the period from 1890 to 1900?

A. I think it did.

Mr. Reed: I object to that as leading.

Mr. Colton: I say, did it or not?

Mr. Reed: Well, I object to it as leading.

By Mr. Colton:

Q. Were there penalties paid by members of that pool under any circumstances?

A. If it were a percentage pool; there are three different kinds of pools, and I am just taking here——

Q. I am asking about the pools that were in existence during that period.

A. There were pools; I have testified to that.

Q. Tell us about them.

A. You have asked me about this. I say, if it was a percentage pool——

MR. REED: Excuse me. You were not asked that; you were asked what kind of pools there were, and if you do not remember, that would be the end of it.

THE WITNESS: I do not remember the different pools.

By MR. COLTON:

Q. Don't you remember that there were different pools during that period?

A. I remember that there were different pools.

MR. REED: I object to that as leading.

By MR. COLTON:

Q. Explain as many different kinds of pools as you remember.

A. I can only explain one. Take a percentage pool. If a corporation had a certain percentage, and they shipped beyond that percentage allotted to them, they were obliged to pay so much per ton into the pool. If they shipped under that percentage, they received so much from the pool. That is a percentage pool. Now, we had pools of that kind, but as for the $2.50, whatever it was, that he may refer to, I do not know about that.

Q. Will you state as nearly as you can what companies were in the pool, or the pools that you have described during the period from 1890 to 1900, inclusive?

MR. REED: I object to that because the witness has not said that the pools continued from 1890 to 1900, inclusive.

MR. COLTON: I said pool or pools.

THE WITNESS: I have given that.

By MR. COLTON:

Q. Will you answer the question?

A. Well, the Pennsylvania, the Cambria, the Lackawanna, the Carnegie, the Illinois, up to 1900; was that the question?

MR. LINDABURY: Yes.

THE WITNESS: (Continuing) And the Bethlehem.

By Mr. Colton:

Q. There were periods in which there were no pools during those ten years?

A. I know we were not a member of a pool along about 1897, because we withdrew from a pool. We were out.

Q. In general terms, what led to your withdrawal from the pool about 1897?

A. We did not think certain members of the pool were living up to their agreement.

Q. Will you give the membership in that pool from which you withdrew about 1897?

A. The Illinois Steel Company, the Carnegie Steel Company, the Cambria, Maryland, Pennsylvania, Bethlehem and Lackawanna.

Q. What sort of a pool was it that was in existence about 1897, at the time you withdrew?

A. I do not remember.

Q. Did it have any arrangement as to what should be the price of rails before its dissolution?

A. We always agreed upon the price.

Q. Did it have any arrangement whereby percentages should be paid?

A. I do not remember that.

Q. Do you recall having heard of an agreement or arrangement among certain of those in this general pool that was not, during the entire existence of the general pool, known to all the members?

Mr. Reed: That is objected to as hearsay, and therefore incompetent.

The Witness: Yes, sir.

By Mr. Colton:

Q. What were the companies who had this arrangement among themselves within the pool?

A. The Illinois Steel and the Carnegie.

Q. How did you become aware of this inner arrangement within the pool?

A. Well, they had this agreement among themselves, and asked for a committee to arbitrate their differences. That brought it before the rest of us.

Q. They brought up this quarrel among themselves, then, before the rest of the rail manufacturers?

A. Yes.

Q. Did you get any idea as to the general character of that quarrel?

MR. REED: That is objected to as irrelevant and immaterial.

THE WITNESS: Undoubtedly at the time, but I do not remember now what the difficulty was.

By MR. COLTON:

Q. Do you recall that at or about the time that you withdrew from the rail pool prices rose very rapidly in this country in the sale of standard rails?

A. Rose?

Q. Yes.

MR. LINDABURY: In 1897?

MR. COLTON: Yes.

MR. SEVERANCE: Do you mean that breaking up the pool raised the prices?

MR. COLTON: That is what I want to know; whether it did or not.

THE WITNESS: I do not remember any increase in prices.

By MR. COLTON:

Q. What happened to the prices on the dissolution of the pool?

A. They fell.

Q. About how much did they fall?

A. I cannot answer. I think rails sold down to about $14.00.

Q. Do you recall a proposition that was on foot subsequent to the dissolution of the rail pool in 1897 to organize a company by the name of the Empire Rail Company of New Jersey?

A. I do not recall that it was at that period. I remember there was.

Q. Well, at a later period?

A. Yes.

Q. Will you tell us who was concerned in the organiza-

tion of this company; I mean, what rail manufacturers were concerned in the proposed organization of this company, and what, in a general way, the company was to do?

MR. REED: If he has any personal knowledge.

MR. COLTON: If you have any personal knowledge of it.

THE WITNESS: The Carnegie Steel Company, the Illinois Steel Company, the Pennsylvania Steel Company, the Maryland Steel Company, the Cambria Steel Company and the Lackawanna Steel Company.

By MR. COLTON:

Q. How about the Colorado Fuel & Iron Company?

A. I think they were consulted, but I am not certain that they were really in the association.

Q. I have forgotten whether you named the Bethlehem Company or not.

A. That is what I was trying to recollect,—whether Bethlehem was in it. I do not think they were in it.

Q. You have not finished telling us what this company proposed to do. Will you go on and tell us that?

A. It was a selling company, and proposed to sell the rails for these different companies; to sell their rail product.

Q. At a common price for all rails?

MR. LINDABURY: Why do you ask that? Why do you suggest that? Why do you not leave it to him to tell?

By MR. COLTON:

Q. Would there be any arrangement at what price this proposed organization would sell?

A. No. It was a selling company for the product of these companies.

Q. Was it to purchase the product from all the different companies?

A. Yes; certainly.

Q. Was it a stock company in which each of the rail manufacturers was to have a certain amount of stock or not?

MR. REED: Why not let Mr. Scranton testify?

MR. COLTON: I said "or not"?

MR. REED: I object to that as leading.

THE WITNESS: If I remember correctly, it was to be a stock company.

By MR. COLTON:

Q. Did this company ever succeed in carrying out the purposes for which it was originally formed?

A. No, sir.

MR. LINDABURY: Why do you put it that way? You have not shown it was organized. My information is that it was not.

By MR. COLTON:

Q. Was the plan carried out?

MR. REED: Did it ever begin business?

THE WITNESS: No, sir.

By MR. COLTON:

Q. Do you recall why the plan fell through?

A. One company finally disagreed.

Q. What company was that?

A. The Carnegie.

Q. What individual in that company, if any particular one, was responsible for that disagreement?

MR. REED: That is objected to as incompetent.

MR. LINDABURY: How does he know that?

MR. REED: His knowledge has not been shown, or even hinted at.

MR. COLTON: He will only answer from knowledge.

(By request, the stenographer repeated the pending question as follows:)

"Q. What individual in that company, if any particular one, was responsible for that disagreement?"

MR. LINDABURY: Of your own knowledge, if you have any.

THE WITNESS: Andrew Carnegie.

By MR. COLTON:

Q. During that period that you were not in the rail pool, subsequent to about 1897, do you know whether there was any arrangement among certain rail manufacturers in the United States—

MR. REED: Of your own knowledge.

MR. COLTON: (Continuing) Or from general trade knowledge?

MR. REED: That is objected to as hearsay and therefore incompetent.

(By request, the stenographer read the question as amended.)

MR. REED: The question as amended is objected to as hearsay and utterly incompetent. Counsel certainly would not ask it if a court were here to rule on the question.

MR. COLTON: Matters generally known in the trade are all right.

THE WITNESS: Yes.

By MR. COLTON:

Q. What companies were in such an arrangement among themselves, if you know?

MR. REED: That is objected to as hearsay. You are asking him again to tell from general rumor in the trade.

THE WITNESS: From general rumor—

MR. REED: That is what you are speaking of, is it, Mr. Scranton?

THE WITNESS: Yes; Carnegie, Illinois, Pennsylvania, Cambria and Maryland.

By MR. COLTON:

Q. How would a combination on the part of the Carnegie Steel Company, the Federal Steel Company, the Cambria Company and the Colorado Fuel & Iron Company to sell standard rails cheaper in the east than in the west, and to divide the profits derived from the rail business, affect their competition with the eastern rail manufacturers?

MR. REED: That is objected to as speculative, and not warranted by any evidence in the case.

THE WITNESS: It would be to the injury of the eastern mills.

MR. REED: And it is further objected to as not being a matter for expert testimony.

By Mr. Colton:

Q. Was there another rail pool formed between 1897 and the formation of the United States Steel Corporation, in which you became a member?

Mr. Reed: That is objected to as leading.

The Witness: Yes, sir.

By Mr. Colton:

Q. Will you give the membership in that rail pool?

A. The Illinois and Carnegie, Lackawanna, Pennsylvania, Maryland and Cambria.

Mr. Reed: Bethlehem?

The Witness: No. I do not think they manufactured rails at that time. They might have done so.

By Mr. Colton:

Q. State what sort of a pool that was.

A. I do not remember.

Q. Did you have any agreements as to prices?

Mr. Reed: That is objected to as leading, and further—

The Witness: I do not remember that.

By Mr. Colton:

Q. State whether or not you had any arrangement covering percentage—

Mr. Reed: That is objected to as leading, and further is objected to because the witness has just stated that he does not remember the details or nature of the pool.

Mr. Colton: I am giving him some of the details—

Mr. Reed: I know. You are leading him.

Mr. Colton: I am suggesting questions by way of—

The Witness: I think it was a percentage pool.

By Mr. Colton:

Q. Will you describe the pool, to the best of your recollection, Mr. Scranton?

A. That is about all I can remember of it. It was a percentage pool.

Q. In what manner did the percentage pool operate?

A. I do not remember that pool, as to how it did operate.

They alloted product on a certain percentage. Whether there was any penalty in this for overshipment or provision for receiving anything for under-shipment I cannot remember.

Q. About what period was this pool formed?

A. I do not remember.

Q. During that period, from the time this pool was formed up to the formation of the United States Steel Corporation, did the manuacturers in that pool reach any agreement as to the price of standard rails?

MR. REED: That is objected to as leading, and objected to further because the witness has said that he does not remember the details or the nature of the pool.

THE WITNESS: I do not remember any agreement as to price.

By MR. COLTON:

Q. Do you recall whether a common price was arrived at from time to time in that pool?

MR. REED: That is objected to as incompetent, and leading.

THE WITNESS: Yes. We met and suggested a certain price to be made, that would vary in different mills and orders.

By MR. COLTON:

Q. The price varied at different mills?

A. It varied, I mean, at times, according to orders in that pool, as I remember it.

Q. You met and suggested different prices, you say?

A. No. When we met we would bring up these inquiries, as among gentlemen, and would say: "What would you suggest as a price on that?" But there was not any special agreement, as in some of the pools, if I remember correctly; as in some of the other pools.

Q. And then it was brought up among the gentlemen there as to what they should suggest as to the price? Did you express views as to what you should sell at?

MR. REED: That is objected to as leading.

THE WITNESS: Naturally.

By Mr. Colton:

Q. State whether or not you sold at that price, after such suggestions had been made?

A. Often; at other times not.

Q. When you did not sell at that price, suppose you learned of a member who failed to sell at the suggested price, under those circumstances, did you regard him as living up to the understanding?

Mr. Reed: That is objected to as incompetent.

The Witness: No.

By Mr. Colton:

Q. Did you ever see any of the officers of the Carnegie Steel Company at the meetings of that pool?

A. Yes.

Q. Name those that you saw there from time to time?

A. Just what pool is this? Of what date? You take me back a good many years.

Q. The pool that was formed subsequent to 1897, and lasted down to—

Mr. Lindabury: Wait. Wait.

Mr. Colton: All right. I will withdraw the question.

Mr. Lindabury: One minute. Hold on, please—

Mr. Colton: I have withdrawn the question, Mr. Lindabury; is there anything more to say?

Mr. Lindabury: I think when a question is withdrawn, as I have heard Judge Dickinson remark often, argument ought to stop.

Mr. Colton: That is the reason I withdrew the question.

Mr. Lindabury: Let us get his own recollection.

By Mr. Colton:

Q. Name those officers of the Carnegie Steel Company whom you saw at meetings of the pool which was formed subsequent to the dissolution of the pool previously testified to by you.

A. Mr. Schwab. At those pools the President generally attended the pool meetings, and at that date I should state that Mr. Schwab was the President of the Carnegie Steel Company, and he attended those meetings.

Q. Did you state the Federal Steel Company was a member of that pool?

A. The Federal, I think—

MR. LINDABURY: I think you mentioned the Illinois.

THE WITNESS: I mentioned the Illinois. That was the Federal, I meant.

MR. LINDABURY: I supposed so.

THE WITNESS: The Federal covered, as I remember, the Illinois and the Joliet.

MR. LINDABURY: Quite right; but you mentioned the Illinois. That was what I meant to say.

THE WITNESS: Exactly.

By MR. COLTON:

Q. Who attended it for the Federal?

A. Judge Gary, Mr. Buffington, President of the Illinois.

Q. Was there any rail company that was not taken into that pool during the period in question?

A. The Bethlehem was a rail company, but they were not manufacturing rails; consequently they were not a member of it. I have forgotten whether the Colorado was in it or not.

Q. How about the National Steel Company?

A. I do not remember.

Q. How about the Youngstown plant of the National Steel Company?

A. I do not remember that they were in it.

Q. Did you at any time ever see any one attend one of these pool meetings for the National Steel Company, either in the period named, or at a subsequent date, if the pool continued to exist?

A. Did I ever see anyone attend the meetings?

Q. Yes; in behalf of the National Steel Company.

A. As a member of that pool?

Q. As a member of that pool, yes.

A. If you will allow me,—was that the company of which W. E. Reis was President?

MR. REED: I believe so.

MR. COLTON: Yes; he was president at one time.

THE WITNESS: I do not remember that they were a member of the pool.

By MR. COLTON:

Q. State whether or not the United States Steel Corporation through the acquisition of the Carnegie Steel Company, the Federal Steel Company (including the Illinois Steel Company and the Lorain Steel Company) and the National Steel Company (including the Youngstown plant of that company) acquired such a percentage of the capacity in the United States for the manufacture of standard rails that it could practically control the price of standard rails in the United States.

MR. REED: That is objected to as incompetent, as calling for speculation, as calling for a conclusion which is for the court and not for a witness, and as not being a question for expert testimony.

THE WITNESS: I do not think it could control the price, but naturally their suggestions would be carefully considered by the other companies.

By MR. COLTON:

Q. Would the same weight have been attached to your opinion as to the proper price as was attached to the opinion of the United States Steel Corporation?

MR. SEVERANCE: Do you ask that seriously?

MR. REED: Just a moment. This being a proceeding in a court of justice, the question is objected to as entirely incompetent, irrelevant and improper, and not a matter for opinon evidence, and with due deference to my friend, is an unlawyerlike question. You are going to withdraw that, are you not, Mr. Colton?

MR. LINDABURY: That question is withdrawn?

MR. COLTON: Yes.

By MR. COLTON:

Q. Would the Lackawanna Steel Company, with the capacity it then had, have had the same influence with respect to the controlling of the price of standard rails as the United States Steel Corporation?

MR. REED: Objected to as incompetent and not a matter for opinion evidence, and as speculative.

(By request, the pending question was repeated by the stenographer.)

MR. LINDABURY: You know what Mr. Morgan said, "influence is personal; it depends on character."

By MR. COLTON:

Q. Was that influence due to the character of the Steel Corporation or to the location of its plant and the extent of its capacity?

A. Location of its plant and capacity.

Q. That was what carried the weight, if it did carry weight with the other manufacturers?

A. Also the arguments presented, undoubtedly.

Q. Could the United States Steel Corporation have raised the price of steel rails in this country at the time of its formation, even though such a company as the Lackawanna Company had desired to fix a lower price than that that the Steel Corporation did fix?

A. Will you read that question again?

(By request of the witness, the stenographer repeated the question.)

THE WITNESS: No.

(By request of Mr. Colton, the stenographer again repeated the question.)

By MR. COLTON:

Q. Will you explain?

A. They might have raised their price with one large member out, and that would have settled the business very soon of keeping that price, maintaining that price.

Q. Suppose the Tennessee Coal & Iron Company was left out, with a capacity of—assume its capacity to be about 400,000 or 500,000, could they maintain such a price under those circumstances?

A. No, I think one company being left out it would be difficult to raise the price over and above what the other companies sold for. You would have to have a common agree-

ment among them all, as a unit, to maintain the price. The United States Steel could not have increased the price if the Lackawanna, Pennsylvania and Maryland had remained at the lower price.

Q. Is it not a fact that a lower price can be maintained without agreement?

MR. REED: I object to that as cross examination of the witness.

THE WITNESS: It would be rather difficult, I should think.

By MR. COLTON:

Q. If you were informed that the price had remained since May, 1901, up to October 26th, 1911, at $28.00 and from your practical knowledge of the workings of prices in the rail business would you assume that there was any understanding in respect to reaching the price in question?

MR. REED: Objected to as incompetent, and as not a matter for opinion evidence or assumption or guesswork.

THE WITNESS: I should think there was some understanding.

By MR. COLTON:

Q. Were you familiar, for the larger part of your business career, with the working of competition both when it is affected by pools in the standard rail business, or when there was no pool in the standard rail business?

A. Yes.

Q. State whether or not Andrew Carnegie's method of competition gave rise to any feeling on the part of other manufacturers of steel rails, with respect to his continuance in the standard rail business, or not.

MR. REED: I object to that as vague.

MR. COLTON: It is either vague or leading; I will let this be vague.

MR. LINDABURY: How can the witness tell about anyone else's feeling but his own.

THE WITNESS: I think there was a general feeling that it would be a godsend if Carnegie was out of the rail business.

By Mr. Colton:

Q. Was that feeling confined to the makers of standard steel rails, or was it more generally the feeling?

A. I know only about the steel rail business.

CROSS EXAMINATION,

By Mr. Reed:

Q. At this time in 1897, when the old pool broke and prices fell as you say to $14.00 a ton?

A. Yes, that is right.

Q. What was the most aggressive of the competitors that you had then?

A. The Carnegies.

Q. Led by Mr. Andrew Carnegie?

A. Yes.

Q. $14.00 a ton was less than it cost to make rails, was it not?

A. It certainly was for the Lackawanna.

Q. And if that very desirable situation had continued, your company would have had to go out of business, would it not?

A. We practically did from that time. If you will allow me to make a statement, that was an object lesson, that rail fight, to the Lackawanna, that we would have to change our location, because Scranton was no place to manufacture the rails and assemble the raw material and distribute the finished product. Consequently that made us look around to get a new location, consequently we went to Buffalo and started there.

Q. There were very few of the rail manufacturing companies that could make rails for as low as $14.00 a ton, were there not?

A. Yes.

Q. And if that situation had continued very long Mr. Carnegie would probably have been the only man in the business, would he not?

A. I do not know whether Mr. Carnegie could have made rails for $14.00.

MR. LINDABURY: He could have held out longer than the rest of them, couldn't he?

THE WITNESS: I don't know about that. We remained in sometime, but we had other things than rails that kept us going in that fight.

By MR. REED:

Q. What happened to wages at that time?

A. If I remember, wages fell, naturally.

Q. The lowest in many years?

A. Yes.

MR. COLTON: I object to the question as leading, in stating that they were the lowest in many years. The period is not definite, and the question of wages has not been gone into. It is a new subject, and the question is leading, incompetent, irrelevant and immaterial.

MR. REED: Your humor is exquisite.

(Whereupon, at 5:40 o'clock P. M. an adjournment was taken to tomorrow, Tuesday, January 28th, 1913, at 10:30 o'clock A. M.)

FORTY-FIRST DAY.

EMPIRE BUILDING, 71 Broadway
New York City.

TUESDAY, JANUARY 28, 1913.

Before Special Examiner JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED; also, on behalf of the Great Northern Iron Ore Interests, MR. FREDERICK R. KELLOGG and MR. CHESTER W. CUTHELL.

MR. DICKINSON: Have you found that telegram, gentlemen?

MR. BOLLING: We have hunted thoroughly for it, and find no correspondence on the subject whatever—telegrams, cables, letters or anything.

P. H. NELSON

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. COLTON:

Q. What is your business, Mr. Nelson?

A. I am in the exploration and iron mining business.

Q. In what part of the country?

A. On the Mesabi Range and the Cuyuna Range in Minnesota.

Q. Have you been to the Mesabi Range?

A. Yes, I have been on the Mesabi Range for close to twenty years.

Q. In what capacity did you go to the Mesabi Range?

A. I went up there to work for the Duluth, Missabe & Northern Railroad as a telegraph operator in the first place.

Q. At what point?

A. I worked at various points along the line——Pewabic, Virginia, Hibbing and Proctor Knott; also at Duluth for the railroad company.

Q. To what railroad interest does the railroad just mentioned belong, if you know?

A. It belongs to the United States Steel Corporation at the present time.

MR. SEVERANCE: Do you mean to put your question just as you did, Mr. Colton?

MR. COLTON: Yes.

By MR. COLTON:

Q. Will you give the name of the road? I may not have caught it.

A. The Duluth, Missabe & Northern.

Q. How long were you employed on that road?

A. I was employed there from 1893 until 1897.

Q. What did you do after 1897?

A. I went to work for the Wright & Davis people, the Duluth, Mississippi River & Northern Railway. That is now a part of the Great Northern.

Q. Did that belong to the Great Northern interests at that time?

A. No. It belonged to the Wright & Davis people.

Q. Who were the Wright & Davis people?

A. They were Saginaw, Michigan, people that owned this Duluth, Mississippi River & Northern Railroad, and owned the fee to ore lands on the Mesabi Range which were afterward sold to Mr. Hill, and since that time were leased by Mr. Hill to the Steel Corporation.

Q. What were the respective names of that property or properties at that time, if you know?

A. There were two working mines at that time, the Mahoning Mine and the Stephenson Mine, that were leased to operating companies, and then, too, besides that, the Wright

& Davis people owned a big acreage of undeveloped ore lands, which, since that time, have been developed.

Q. What were your duties at that time?

A. I was agent for the Wright & Davis people at Hibbing at that time.

Q. What did you do as agent?

A. I had the general duties of an agent there. Besides the regular duties, I looked after the handling of the ore business of the Mahoning Mine and the Penobscot Mine.

Q. When did you first become interested in mining properties in the Mesabi Range? What was the approximate date?

A. It was either 1898 or 1899.

Q. And in what properties did you become interested?

A. I started exploring what was known at that time as section six there at Hibbing, and is now the Webb Mine.

Q. You say you started exploring. What did you do in addition to exploring, if anything, in respect to that mine?

A. We just drilled it and discovered the ore and sold the property.

Q. Who were "we"?

A. Starting in, there was a little syndicate of us, I think there were six of us who started in.

Q. You need not name them, but were you one of the owners?

A. Yes; well, we had an option for a lease. Mr. Allworth was the fee owner.

Q. Did you take the lease?

A. Yes; the option was exercised.

Q. What was the extent of the then developed ore of the Webb Mine?

A. My recollection is that we had about three and a half million tons. There has been a great deal shown up since that time.

Q. What was the rate of royalty?

Mr. Reed: That is objected to as incompetent and irrelevant.

Mr. Kellogg: So far as the Great Northern trustees are concerned, we object to it upon the ground that the rate of

royalty in 1898 is immaterial as bearing upon the reasonableness of the royalty in 1907.

THE WITNESS: We paid Mr. Allworth twenty-five cents a ton, and then there was two cents a ton that went to the people who had secured the option for us, making twenty-seven cents.

By MR. COLTON:

Q. What was the general character of the known developed ore of that mine?

A. It was fairly good ore, but the property was not considered particularly valuable, on account of the surface being a little bit heavy at that time; that is, the over-burden was deep.

Q. How deep was the over-burden?

A. 65 feet was about the average. Of course, that is not considered any depth at all at this time, but at that time it was.

Q. Why was that considered a great depth at that time?

A. They had not developed the stripping business at that time in the way they have now, and steam shovels were not as large or as efficient.

MR. LINDABURY: This is a progressive age. We get deeper as we go on.

THE WITNESS: Then there were other mines that had a good deal less surface; so that had a bearing on it.

By MR. COLTON:

Q. Who owned those other mines that had less surface at that time, if you know?

A. The Mahoning was an open pit mine, and had a great deal less surface; and there were a number of mines around Virginia and other places that only had 15 or 20 or 25 feet of surface.

Q. What was approximately the metallic content of that ore in its natural state, or dried, either one?

A. I would rather give you that dried, because I could not give you what the natural would be, as the determinations of all the explorations are made dry—212 degrees. That was a

good grade of ore. I should think it would average 57 or 58 per cent.

Q. Was that Bessemer or non-Bessemer?

A. There were both; both kinds of ore.

Q. Was that reached by any railroad at that time?

A. Yes, there were two roads in there, the Duluth, Mississippi River & Northern, and the Duluth, Missabe & Northern.

Q. In what mine did you become interested subsequent to that period, if you did become interested in other mines?

A. I secured an option on what was known at that time as Section 29 and Section 32 in 58-20, and we developed two ore bodies; they are known as the St. Anthony mines.

Q. Do you recollect approximately the known developed tonnage of the mine at the time you acquired it?

A. There was no developed ore in these mines, when we took the option, to speak of.

Q. Did you exercise the option?

A. Yes, sir.

Q. You took a lease on the property?

A. Yes, sir.

Q. At the time you took the lease was there any known developed tonnage on the properties at that time?

A. We showed up close to 5,000,000 tons of ore there.

Q. About what date did you acquire that property by lease?

A. My recollection is about 1902.

Q. Before the formation of the United States Steel Corporation in point of time?

A. It seems to me it was after the formation of the Steel Corporation.

Q. And what was the rate of royalty that you paid on that mine?

Mr. Kellog: I object on behalf of the Great Northern interests on the ground the rate of royalty paid in 1902 is immaterial and irrelevant as to rates payable in 1907; also upon the further ground it is submitted that this is not the proper method of introducing testimony of this nature; the witness should first be qualified as an expert if he is called as one, and then asked generally; and testimony should not

be introduced in the way of specific leases at entirely different dates, entirely different royalties and involving entirely different properties.

Mr. Reed: We object to it as immaterial and irrelevant, and as incompetent to prove the prevailing rate of royalty or the reasonableness of any rate of royalty.

Mr. Colton: Will you read the question?

(The stenographer repeated the question as follows:)

"Q. And what was the rate of royalty that you paid on that mine?"

The Witness: That lease provided for 27 cents a ton to the Pillsburys, and I believe it was 2 cents a ton to other parties, making 29 cents a ton royalty.

By Mr. Colton:

Q. What grade of ore did the properties contain?

A. That was mostly a non-Bessemer ore developed in that property; a fair grade, however.

Q. Did you keep that property?

A. No, sir.

Q. What did you do with it?

A. I turned that over to the Hill people.

Q. You turned over your lease?

A. Yes, sir.

Q. What time did the lease have to run?

A. I believe that was a 50 year lease; that is the best of my recollection.

Q. At what rate of royalty did you turn it over to the Hill interests?

Mr. Kellogg: I make the same objection on each and every ground as before stated; it is not necessary to repeat the objection.

The Witness: I sold my interest in the lease and turned it over.

By Mr. Colton:

Q. Do you recall the amount that you received?

A. No, I do not. I do not just remember what—I made several different deals, and did not turn it all at one time.

Q. You do not recall at all the total amount of money that you received in disposing of the property to the Hill interests?

A. I think I received something like $45,000.

Q. How much of this interest did you own in the property?

A. I had a third interest.

Q. Do you know who had that property on October 26th, 1911?

A. The St. Anthony properties?

Q. Yes.

A. This property?

Q. Yes.

A. The Wysox Iron Company.

Q. Is the Wysox Company connected with any steel-producing corporation or company, if you know?

A. I could not say.

Q. What was the next property that you acquired in Mesabi?

A. The Lewis; I had an interest in the fee of the Lewis.

Q. Did you explore the Lewis property?

A. Yes, sir.

Q. And did you exercise your option?

A. Yes, I was one of the fee owners, and we had it explored ourselves.

Q. Do you know what the tonnage of that property was?

A. That turned out pretty well; I sold my interest in the fee very shortly afterwards; it was not fully explored; that is good property.

Q. What grade of ore?

A. Well, there is some good merchantable ore and then there is a lot of washing ore, sandy ore, that makes a very good product.

Q. To what company did you dispose of that property?

A. I sold my interest to Louis Hill.

Q. Was Louis Hill the only person that approached you in respect to the property?

A. No; there were others approached me.

Q. Who were the others?

A. Mr. Swift of the Steel Corporation approached me.

Q. Did he make you an offer?

A. Yes, sir.

Q. Did Hill's interest make you a better offer?

A. No; but I had told Mr. Hill that I would let him have the property.

Q. What was the metallic content of the known developed ore of that mine?

A. Well, there were two grades of ore there; there was a marketable grade that was very nice ore, and then a lot of sandy high silica ore that now with the washing process makes a very good ore.

Q. Was the washing process in use at that time?

A. No, sir.

Q. About what time was that?

A. 1904.

MR. KELLOGG: 1904?

THE WITNESS: 1904, yes, sir.

By MR. COLTON:

Q. On what part of the Mesabi Range was that property located?

A. That is in the Coleraine district; Western Mesabi.

Q. And the Lewis property was located in what part of Mesabi?

A. That is the one I am just speaking of.

Q. The St. Anthony properties were located in what?

A. That is in the Hibbing-Chisholm.

Q. And the Webb mine is located in what part?

A. The Hibbing.

Q. I did not catch what part of Mesabi you said the Hibbing district was in?

A. That is in the central part.

Q. At the time that Mr. Swift of the United States Steel Corporation approached you in respect to these properties, state whether or not the Hill interests were engaged in acquiring properties in that district.

A. They were.

Q. Up to that time had the United States Steel Corporation, so far as you know, been interested in the acquisition of properties in that portion of the Mesabi?

A. Well, it started in acquiring properties there six months before that.

MR. REED: About when?

THE WITNESS: About six months before that time.

MR. REED: That is about six months before 1904?

THE WITNESS: Well, along the early part of 1904.

By MR. COLTON:

Q. What property did you acquire next after that in the Mesabi Range?

A. I acquired a property on the La Prairie River, acquired an interest in the fee there.

Q. What grade of ore?

A. Well, that mine developed about 800,000 tons of good merchantable ore, and several million tons of washing ore, concentrated.

Q. Will you tell me a little more about what washing ore is?

A. Washing ore is low grade, naturally, on account of having a great deal of free silica mixed in with the ore, and you remove this silica by washing and it makes good high grade ore.

Q. Is ore containing the kind of deposit that you have just referred to of a low grade always capable of washing?

A. No; not all low grade ore, that is, washing ore is an ore that contains free silica. Some of the ore has combined silica, and at the present time that is not considered washing ore, although I think some day they will develop a process for concentrating that ore. At the present time, however, the only ores that are concentrated are those having free silica.

Q. How expensive is the washing process?

A. I have been told that they concentrate the ore at Coleraine.

MR. REED: I object to this as hearsay.

By MR. COLTON:

Q. All right, do you know of any place at which they wash it or had washing plants, if that is the proper term, for this character of ore prior to October 26, 1911?

A. I do not know just the date that that plant at Coleraine, the big plant, was completed. They had an experimental plant that I am sure was in operation before that time, but whether the large plant was——

MR. REED: Whom do you mean by "they?"

THE WITNESS: The Steel Corporation.

By MR. COLTON:

Q. This washing ore enters largely into ore shipments, or entered largely into ore shipments prior to October 26, 1911?

A. I believe 1911 was the first season that washing ore was shipped.

Q. Do you have any idea as to the relative amount of washing ore shipped from the Mesabi Range to the other grades of ore shipped from that range, expressed in terms?

A. It would not be over ten per cent.

MR. KELLOGG: Do you refer to 1911?

MR. COLTON: October 26, 1911.

By MR. COLTON:

Q. Did you understand the date of the question?

A. Yes. Pardon me, did you mean Ooctober 26th in this last question too?

Q. I did.

A. At the present time——

Q. I do not care about the present time.

A. Well, it would not be five per cent of the total amount at that time.

Q. You mean the total amount of ore shipped from the Mesabi Range owned by all the different companies on the range?

A. Yes.

Q. On June 6, 1907, were they using, that is, were mining companies using the ore which we have been discussing under the title of washing ore?

MR. REED: How would a mining company use ore?

MR. COLTON: Ship it for use.

THE WITNESS: No, they had not started washing ore at that time.

By Mr. Colton:

Q. Were washing ores then considered commercially available?

Mr. Kellogg: I object to that as calling for a conclusion which it does not seem to me the witness has been properly qualified to give.

The Witness: Well, everybody expected that those washing ores would be used in time, and there was talk about it.

Mr. Kellogg: I withdraw the objection.

The Witness: (Continuing) Talk about developing a process by which those low grade ores would become commercially developed.

By Mr. Colton:

Q. Was there then in existence, so far as you know, any data on the subject as to the expense of concentrating those ores for use?

Mr. Reed: By "then" what date do you mean, Mr. Colton?

Mr. Colton: The same date just named, June 6, 1907.

The Witness: It was known what they were doing down in Tennessee in concentrating ores. People were investigating the subject.

By Mr. Colton:

Q. What was the next property that you acquired?

A. We acquired some properties down on the Cuyuna Range.

Q. Up to June 6, 1907, had there been any ore shipped from the Cuyuna Range?

A. No, sir.

Q. Up to October 26, 1911, had there been any ore shipped from the Cuyuna Range?

A. There was a small shipment made during 1911. One mine shipped from the Cuyuna Range.

Q. What mine?

A. The Kennedy.

Q. By whom is that owned?

A. The Rogers-Brown Ore Company.

Q. Do you know how large that shipment was?

A. My recollection is that it was 57,000 tons, about.

Q. That was during the year 1911?

A. 1911.

Q. Was there any shipment during 1910?

A. No; there were no shipments in 1910 from that range.

Q. Do you know anything about the Wyman property?

A. Yes. I explored that property. I forgot about that. That is over on the La Prairie River, too.

Q. What kind of ore was there in that property?

A. There was merchantable ore, and also washing ore.

Q. What grade?

A. Bessemer and non-Bessemer; a fairly good grade of merchantable ore.

Q. Did you exercise your option of exploration?

A. Yes, sir.

Q. What did you do with your property?

A. I called for the lease, and after carrying it for a while I was obliged to drop it.

Q. Why did you drop it?

A. I could not dispose of it, I could not carry it.

MR. LINDABURY: He said because he was obliged to.

MR. COLTON: And now I want to know why he was obliged to.

By MR. COLTON:

Q. What circumstances connected with this ore property made it impossible for you to hold it?

MR. KELLOGG: That is objected to as entirely incompetent, irrelevant and immaterial. I can not see how this testimony has any bearing upon the issues involved here.

THE WITNESS: I could not find a customer.

By MR. COLTON:

Q. Was it then commercially available ore?

A. Yes, sir.

Q. That no one would purchase?

MR. REED: By "then," when do you mean?

By MR. COLTON:

Q. At what date was that property acquired by you?

A. I had that property—let me see; I dropped it in 1908. I think I carried it about two years.

Q. How did you drop it?

A. I had to throw it up; I served notice on the fee owners.

Q. Who were they?

A. Mr. J. P. Wyman of Minneapolis, and Mr. Washburn of Minneapolis, and Mrs. Smith were the fee owners.

Q. Did you ever hear of the Bangor Mine?

A. Yes, sir.

Q. What connection did you have with the Bangor Mine?

A. I have no connection with the Bangor Mine, but I am one of the fee owners of property adjoining the Bangor Mine.

Q. What properties adjoining the Bangor Mine do you own the fee of?

A. I think that is Lot 6, Section 5, 58-15. It is a property under the town of Cotton. There is a little village there named Cotton.

Q. What grade of ore does that property contain?

A. That property has not been fully explored. There is some very nice ore there.

Q. Why have you not developed that property?

MR. KELLOGG: That is objected to as immaterial, incompetent and irrelevant.

THE WITNESS: I did not figure that it was the proper time to develop it. Conditions were not right.

By MR. COLTON:

Q. What conditions were not right?

A. That would be wet property, in the first place, and it would be underground mining, and under present conditions I would not think that I should feel as if it was right to open it up and develop it.

Q. What railroad does that property adjoin?

A. The Duluth & Iron Range.

Q. Is that property so located that ore could be shipped from it over any other road than the road that you have just named?

A. The Missabe is in there close by, too; the Duluth, Missabe & Northern.

Q. Both of those roads are owned by the United States Steel Corporation?

A. Yes, sir.

Q. Is there any other road located near enough for you to have facilities put in to ship ore from that mine in case you desired to do so?

A. No.

Q. How would a freight rate of forty cents a ton affect your ability to develop that property?

MR. REED: That is objected to as speculative, calling for a conclusion from a non-expert, and objected to further because it is not a matter for expert opinion evidence.

MR. COLTON: If it calls for expert testimony, it must be a matter for expert evidence.

MR. REED: It is also objected to as irrelevant and immaterial.

(By request, the stenographer repeated the pending question as follows:)

"Q. How would a freight rate of forty cents a ton affect your ability to develop that property?"

THE WITNESS: That would make quite a difference in developing that property. It would be a saving of twenty cents; and twenty cents is a big item in the ore business.

By MR. COLTON:

Q. Upon what does the availability of ore depend—its commercial availability at a given time?

A. Mining costs and transportation costs are the principal factors.

Q. Are you familiar with the business of developing and selling ore properties on the Mesabi Range, Mr. Nelson?

A. I have had some experience along that line.

Q. Do you consider yourself familiar with the business?

A. I think so; yes, sir.

Q. I will read you a statement from the executive committee of the United States Steel Corporation minutes of May 12, 1903, concerning certain properties, and ask you to assume to be true all the facts therein stated for the purpose of the questions that I ask you concerning the same:

"Monroe Ore Property. Chemung Iron Company.

"Mr. Gayley submitted the following:

"The Monroe property which was acquired through the

Chemung Iron Company controlled by Henry W. Oliver and others, contains about 25,000,000 tons of ore and the lease has 28 years to run."

This is page 972, Volume III of Government Exhibits.

"On this we are paying 50 cents a ton royalty. The lease on this ore property owned by the Chemung Iron Company carries with it a traffic contract to the Eastern Minnesota Road. It was the intention of the Chemung Company to obtain a surrender of this lease and have a new lease executed without the traffic contract which would leave the property free of any traffic obligation, but the various plans presented do not seem practicable for accomplishing this. In carrying out this scheme, as it was the intention of the Chemung Company, Mr. Oliver proposes to purchase the fee of this property on behalf of the Chemung Company, cancelling the lease and selling the fee to us on the basis of thirty cents per ton of merchantable ore shown up in the property; bonds to be issued for the same as in the case of the ore properties which we got through the Union-Sharon deal. In accordance with Mr. Fraser's figures, as the lease has 28 years to run, on a basis of fifty cents a ton royalty this royalty on the basis of four per cent for the period of the lease has a present cash value of thirty cents per ton. The securing of the property therefore on this basis would not cost more than on the present basis and we will be sure of the traffic contract on the ore, which will net us thirty-five cents per ton. In other words, by securing the traffic contract we secure the ore in this property free of royalty, the profit on the traffic contract more than compensating for the royalty."

What advantage will accrue to a company owning railroads which net 35 cents per ton profit in acquiring ore properties in competition with companies not enjoying such facilities? You may answer the question in your own way.

MR. LINDABURY: May I have the question repeated.

(By request, the question was repeated by the stenographer as follows:)

"Q What advantage will accrue to a company owning railroads which net 35 cents per ton profit in acquiring ore

properties in competition with companies not enjoying such facilities?"

THE WITNESS: Naturally it would give them a great advantage in acquiring properties.

By MR. COLTON:

Q. Why?

A. Well, 35 cents a ton is a big item in the ore business. With a low priced commodity like iron ore, frequently the royalties are not more than 35 cents, and sometimes the entire mining costs are not above 35 cents; so naturally they would have a great advantage in acquiring properties.

Q. How does it affect the rate of royalty which a company having such facilities can pay for ore properties as compared with a company not having such facilities?

MR. REED: That is objected to as being speculative, not a matter for expert or opinion evidence; if it is a matter for expert or opinion evidence, the witness on the stand has not been shown to be competent to give such an opinion.

MR. LINDABURY: It is perfectly evident that these are questions which should be addressed to the Court and not to any witness.

MR. COLTON: Just a moment in regard to that, Mr. Lindabury, though I do not suppose we ought to argue the objections here. I believe that this is a matter for a skilled witness, that a witness who is familiar with the ore business can point out specifically points which the Court or an ordinary person could not see as affecting the independent companies, and that is the purpose of my question.

MR. LINDABURY: But what is there in it of a technical nature that Judges would not understand just as well as any witness. You can form a conclusion, so can I, equally with this witness whether that is an advantage, and speculate as to the extent of the advantage. Why should we sit here hour after hour and take testimony that any Court will say we ought not to have taken, and that some courts may criticise severely. I say that, not because I mean to question your good faith, but I suggest to you whether or not we are not doing what ought not to be done.

Mr. Colton: I feel that it is a proper question for a skilled witness. Will you read the question, Mr. Stenographer.

(By request, the stenographer thereupon repeated the question as follows:)

"Q. How does it affect the rate of royalty which a company having such facilities can pay for ore properties as compared with a company not having such facilities?"

The Witness: I think that if I were placed in that position I would be enabled to pay just that amount more in royalty than my competitors.

Mr. Lindabury: If your competitor had to ship over your road and if he paid it?

The Witness: Yes, if he paid the regular rate.

By Mr. Colton:

Q. What difference would such a profit on the ore make in the cost of the ore to the company enjoying 35 cents net profit?

Mr. Reed: That is objected to for the same reason as the last question.

The Witness: 35 cents a ton on iron ore is a big item.

By Mr. Colton:

Q. State whether or not 35 cents per ton additional cost upon the production of ore for sale at the Great Lakes would affect the question as to the available commerciality of said ore?

Mr. Reed: Objected to for the same reason as the last question.

The Witness: 35 cents a ton would be a big handicap and a company placed at that disadvantage would have to mine high grade ores and mine their ores where the costs were as low as possible.

By Mr. Colton:

Q. For a company enjoying a profit of 35 cents per ton on ore shipments, would or would it not be able to use a lower grade of ore than a company not enjoying such a profit in respect to transportation?

A. Yes, a company with that advantage could mine ore of lower grade than a company not enjoying that advantage.

Q. How would this circumstance, that it could mine lower grade ores, affect the market for ore properties?

MR. REED: I object to that as vague and speculative.

MR. KELLOGG: The same objection.

THE WITNESS: The company that did not enjoy this advantage in purchasing property would have to consider the quality and the mine features more closely than a concern that might enjoy that advantage of 35 cents a ton.

By MR. COLTON:

Q. Would a company not enjoying such a profit in respect to ore transportation, assuming other matters to be equal, be able to go into the market for the same class of ores as a company which enjoyed said advantages?

MR. REED: Objected to as speculative.

MR. KELLOGG: The same objection.

THE WITNESS: I wish you would repeat that question.

(By request of the witness, the pending question was repeated by the stenographer.)

THE WITNESS: No, sir.

By MR. COLTON:

Q. Why not?

A. They would not be able to pay the same rate of royalties as the company that enjoyed this advantage in transportation; they would not be able to secure the properties.

Q. What effect does an unreasonable freight rate have upon the properties of individuals and companies not owning their own freight facilities?

MR. REED: Objected to as speculative and incompetent, and I object to the witness because he has not been shown to be competent to testify on that subject. I object to it further because the rates in force have not been shown to be unreasonable.

MR. COLTON: I assume the rates to be unreasonable.

MR. REED: I know you do; that is our objection.

MR. COLTON: Read the question.

(By request, the stenographer repeated the pending question.)

By MR. COLTON:

Q. (Continuing.) With respect to the transportation of ore.

MR. LINDABURY: Has this man ever been a shipper? He testified before the Stanley Committee that he had not been.

THE WITNESS: No, sir, I have never shipped any ore.

MR. LINDABURY: You are asking an expert question as to the effect upon a shipper.

MR. COLTON: He has handled many ore shipments.

MR. LINDABURY: He never ran a railroad and he never shipped any ore, and yet you are asking him an expert question involving a knowledge of both.

MR. COLTON: He has disposed of mining properties.

MR. LINDABURY: He has never shipped a ton of ore and he has never run a railroad, and yet you are asking questions involving an intimate knowledge of both.

By MR. COLTON:

Q. Have you had charge of running a railroad in respect to shipments of ore?

A. What is the question?

MR. REED: He had charge of a telegraph instrument.

MR. COLTON: Will you answer the question.

THE WITNESS: What is the question?

(The pending question was repeated by the stenographer.)

THE WITNESS: I had charge of the mining end, and did the switching of the ore.

By MR. COLTON:

Q. And what were your duties in respect to the shipment of ore there?

A. Assembled it and billed it out and so on.

Q. You have developed many ore properties for sale, have you not?

A. Several.

Q. And are ore properties purchased usually for use?
A. Yes.

MR. LINDABURY: No, for ornament.

MR. COLTON: Will you please read the question which is not answered.

(By request, the stenographer repeated the question, formerly put in two parts, as follows:)

"Q. What effect does an unreasonable freight rate have upon the properties of individuals and companies not owning their own freight facilities, in respect to the transportation of ore?"

MR. REED: We have an objection to that.

THE WITNESS: I think it tends to depreciate values of properties in the hands of people not in the transportation business.

By MR. COLTON:

Q. Mr. Nelson, assume that in 1900 the Carnegie Steel Company was interested in acquiring land tributary to the Duluth & Iron Range Railroad, and that it had an arrangement with the Federal Steel Company and the Duluth & Iron Range Railroad whereby it received a rebate of 40 cents a ton on ores shipped from said ore region to Two Harbors, and that the general and prevailing freight rate from said ore land to Two Harbors was $1.00 a ton, and state the practical effect, if any, such an arrangement would naturally have upon the power of the Carnegie Company to secure ore lands in said district in competition with other parties endeavoring to acquire or hold ore lands in said district.

MR. REED: I object to that as incompetent and speculative, and object to the witness as incompetent.

THE WITNESS: I wish you would read that again, please.

By MR. COLTON:

Q. Assume that in 1900 the Carnegie Steel Company——

MR. REED: Let the stenographer read it.

(By request the stenographer repeated the pending question.)

THE WITNESS: I think that sort of arrangement would eliminate all competition in that territory with the exception of the transportation company. They would be the only people that would have any chance in there if such an arrangement was made.

By MR. COLTON:

Q. Why is that?

A. You could not stand up under that kind of competition. Forty cents a ton is a big item. Of course the transportation company would have the advantage of the difference between the cost and the published rates.

Q. Assume that at the same time there existed between the Rockefeller interests and the Carnegie Steel Company interests an arrangement whereby the Carnegie interests were not to acquire ore lands in the Central or Western Mesabi districts, in return for a contract which was equivalent to a rebate to the Carnegie Company of a large amount per ton in respect to the transportation of its ores; what effect would these arrangements between the several parties named have upon the ability of the Carnegie Steel Company, the Federal Steel Company and the Rockefeller interests to acquire control of the Mesabi Range?

MR. REED: That is objected to as speculative and incompetent. We also object to the witness as incompetent.

MR. COLTON: It is not objected to on the ground that there is no evidence in the record, is it?

MR. REED: I think that objection is strong enough as it stands.

MR. LINDABURY: We also object to it as not being a subject of expert evidence.

THE WITNESS: I should naturally think an arrangement of that kind would work out very nicely for the people interested in it.

By MR. COLTON:

Q. Why?

A. They would not have much competition there.

Q. Why would they not have much competition?

MR. REED: That is objected to for the same reasons.

THE WITNESS: The way it worked out, the only competi-

tion we had up there for ore properties was when Mr. Hill, who was a transportation man, got into the field. We had some competition then.

By Mr. Colton:

Q. Then transportation companies could compete with such an arrangement, could they?

A. That is my idea; that is the way it worked out.

Q. Mr. Nelson, what were the average rates of royalties existing in the Mesabi in 1901, 1902 and 1903 in respect to the acquisition of average good grade Bessemer and non-Bessemer ores?

Mr. Kellog: We object to that upon the ground that, so far as our interests are concerned, it is absolutely incompetent, irrelevant and immaterial as bearing upon conditions existing in the year 1906 or 1907, and upon the further ground that the witness has not shown himself to be competent to testify as an expert upon this point as of any year whatsoever.

By Mr. Colton:

Q. Answer the question.

A. The royalties would run from twenty-five to thirty and thirty-five cents per ton about that time.

Q. What were the usual rates of royalties for ore of the character above specified during the period 1904, 1905, 1906 and 1907?

Mr. Kellog: The same objection as to each and every year.

The Witness: Royalties had increased somewhat up there at that time. I should say forty or forty-five cents. I had the Wyman property under a forty cent royalty in 1906.

By Mr. Colton:

Q. Were you familiar, from being in the region, with the prevailing rates of royalty on other properties than your own property?

A. Yes; I think so. It was common knowledge around there.

Q. State whether or not you are familiar with the Hill ore properties.

A. I am quite familiar with a number of properties in the Hill ore lease.

Q. Assume, at the time of the acquisition of the Hill ore lands by the United States Steel Corporation through lease, that the Hill ore lands in question contained, as then estimated, about thirty million tons of Bessemer ore, and of other ore one hundred and twenty-nine million tons, including non-Bessemer, and assume that the rate of royalty in the Hill lease was as hereinafter referred to: Great Northern Hill ore lease, eighty-five cents royalty for fifty-nine per cent (dried ore) with an increase of 3.4 cents per ton each successive year; assume also that the minimum for the year 1907 was 750,000 tons, with a cumulative additional minimum of 750,000 tons for each year thereafter until 1917, when the minimum was to reach 8,270,000 tons, remaining fixed at that figure until the expiration of the lease; and state whether or not the rate of royalty was below or above that usually prevailing in the Mesabi Range district at the time, the time being 1907.

Mr. Reed: Assume that the rate of royalty is higher than that prevailing?

Mr. Colton: No; the question does not say that.

Mr. Reed: That is objected to because there is no evidence so far in this case to warrant the hypothesis.

Mr. Kellogg: We object to the question upon the ground that if any questions of this nature are sought to be asked concerning the rate of royalty under the Hill lease, the assumption must contain each and every fact which, under the Hill lease, is a material fact and bearing upon the reasonableness of the royalties. On the second ground that the witness has not been shown to be competent to qualify as an expert to answer any such question. On the third ground that the question calls for something which can be shown as a matter of record, because it does not ask whether the royalty is reasonable or unreasonable, but asks whether it is above the prevailing rates of royalty in other leases at or about the same time, all of which is best shown by the production of the other leases, being merely a matter of record; and that upon

all of the foregoing grounds the question is incompetent as a method of proof of the facts sought to be adduced.

(By request, the stenographer repeated the pending question as follows:)

"Q. Assume, at the time of the acquisition of the Hill ore lands by the United States Steel Corporation through lease, that the Hill ore lands in question contained, as then estimated, about thirty million tons of Bessemer ore, and of other ore one hundred and twenty-nine million tons, including non-Bessemer, and assume that the rate of royalty in the Hill lease was as hereinafter referred to: Great Northern Hill ore lease, eighty-five cents royalty for fifty-nine per cent (dried ore) with an increase of 3.4 cents per ton each successive year; assume also that the minimum for the year 1907 was 750,000 tons, with a cumulative additional minimum of 750,000 tons for each year thereafter until 1917, when the minimum was to reach 8,270,000 tons, remaining fixed at that figure until the expiration of the lease; and state whether or not the rate of royalty was below or above that usually prevailing in the Mesabi Range district at the time, the time being 1907."

MR. LINDABURY: In the question should you not assume what the other rates of royalties are?

MR. COLTON: Will you answer the question?

THE WITNESS: That rate of royalty was high at that time.

MR. LINDABURY: That is a hypothetical question. My objection to it is he cannot answer it without knowing what the other rates are. I object to it, because the witness does not know what the usual prevailing rates were, and the question does not tell him.

By MR. COLTON:

Q. If the then estimated tonnage in such properties had been instead of the figure previously named about 159,000,000 tons of Bessemer and non-Bessemer ore, about 250,000,000 tons of Bessemer and non-Bessemer ore, would you or not still be of the opinion that the rate of royalty was high?

MR. KELLOGG: Same objection on each and every ground hereinbefore stated to the last question.

MR. LINDABURY: Objected to further because it involves a knowledge which the witness does not possess of the various conditions affecting the various other leases which control more or less the royalty charge in the lease.

THE WITNESS: I would not consider that the tonnage would make any material difference in the royalty. It would not make any difference whether it was a large tonnage or a smaller tonnage. The mining costs and the grade of the ore are factors to be considered in that connection. The tonnage would not make any particular difference.

By MR. COLTON:

Q. From your familiarity with the general character of the ore in the Hill properties, state whether or not a royalty of 85 cents for 59 per cent (dried ore), with an increase of 3.4 cents per ton for each successive year, with a minimum of 750,000 tons, with accumulative additional minimum of 750,000 tons for each year thereafter, until 1917, when the minimum was to reach 8,250,000 tons, remaining fixed at that figure until the expiration of the lease, and with variations in the rates of royalty as set forth in the following paragraph:

The rates of royalty, which include the charges for the rail transportation, as well as dockage charges, were as follows the year 1907:

Per Cent iron.	Royalty per ton.	Per Cent iron.	Royalty per ton.	Per Cent iron.	Royalty per ton.
49	$1.1680	55	$1.4572	61	$1.7464
50	1.2162	56	1.5054	62	1.7946
51	1.2644	57	1.5536	63	1.8428
52	1.3126	58	1.6018	64	1.8910
53	1.3608	59	1.6500	65	1.9392
54	1.4090	60	1.6982	66	1.9874

with an increase of 3.4 cents per ton every year, for all grades specified above.

State whether or not the rate of royalties provided for were high or low.

MR. REED: That is objected to as incompetent; the witness is incompetent; the assumptions in the question are ob-

jected to for the reasons that they are not a correct statement of the proof thus far introduced, and the form of the whole question is objected to because of its inclusion of part of a printed document which is not stated; it is further objected to as ungrammatical and meaningless.

Mr. Kellogg: We join in the same objection just made; also upon each and every ground specifically stated which has been advanced in reference to the three or four preceding questions.

By Mr. Colton:

Q. Have you read over that paragraph?

A. Yes, sir. In comparison with royalties provided for in leases that were made about that time, this lease and this royalty were high.

Q. Do you know enough about leases to know what are the material provisions of a lease?

Mr. Lindabury: Of any lease?

Mr. Colton: Of a lease in general, of the average Mesabi ore.

Mr. Kellogg: That is objected to upon the ground that the leases are individual things, and a general inquiry of that sort is immaterial, irrelevant and incompetent. The witness should be asked concerning particular leases or particular leases should be offered in evidence and he be asked to inspect them.

The Witness: Well, the cancellation clause is a very important feature of a lease.

By Mr. Colton:

Q. Name the different clauses that are important in a lease.

A. The rate of royalties are very important, the minimum very important; the life of the lease, that is the term of years, is very important. Another important feature in leases nowadays is the washing clause, which allows the washing treatment of ores. Some of the older leases do not provide for that concentration.

Q. Are you familiar, in a general way, with those clauses in the Hill ore lease?

MR. KELLOGG: That is objected to on the ground that in this particular case a mere general familiarity is of no importance, with the witness. The lease itself is the essential thing, and not the witness' general impressions concerning it.

(The pending question was repeated by the stenographer.)

MR. REED: That is objected to as irrelevant. If it is intended to prove the contents of the lease, it is objected to further on the ground that the lease itself is the best evidence.

THE WITNESS: I am just familiar with it in a general way.

By MR. COLTON:

Q. State whether or not you are sufficiently familiar with it to express an opinion as to whether the rate of royalty was high or low.

MR. KELLOG: That is objected to as calling for a conclusion, the witness not having been shown, or not appearing excepting in the vaguest generalities, to have a familiarity with this lease, and the question is immaterial and irrelevant and incompetent.

MR. REED: Objected to on the same grounds as those just stated by counsel for the Hill interests.

THE WITNESS: I think I am.

By MR. COLTON:

Q. Was the royalty low or high?

MR. KELLOGG: The same objections repeated as to each and every point herein alluded to.

MR. REED: The same objection from us.

THE WITNESS: High.

By MR. COLTON:

Q. Materially?

MR. KELLOGG: The same objection, and also upon the ground that this question calls solely for a conclusion which is not within the witness' province to utter.

MR. REED: And we object to it as leading.

MR. KELLOGG: And I join in that objection.

By MR. COLTON:

Q. Sate whether or not the rate of royalty was high, and

if so, approximately how high, and if low, approximately how low, as compared with the prevailing rates of royalties.

MR. KELLOGG: The same objections as those hereinbefore urged to all of the questions along this general line.

MR. REED: We join in that objection.

By MR. COLTON:

Q. Answer the question.

A. Well, it would be pretty hard to say as to how high it was. I do not believe I would be qualified to state, there are so many things to be taken into consideration.

MR. COLTON: I will ask that a copy of the lease be produced at the continuation of this witness' examination after lunch.

MR. KELLOGG: Haven't you got one?

MR. COLTON: No, I haven't any copies.

MR. KELLOGG: I will see if I have mine in the office, and if so you shall have it and welcome. I had a copy in my office, but my partner reminds me that he is not sure whether it has been sent back.

MR. COLTON: Mr. Reed, will you find a copy?

MR. REED: We will try to find one if Mr. Kellogg finds that his is gone.

MR. COLTON: I will continue with the examination after lunch, as I think it would be better to have the lease.

(Whereupon, at 12:45 o'clock p. m. a recess was taken until 2:15 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

P. H. NELSON,

a witness produced on behalf of the United States, having been previously sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

By MR. COLTON:

Q. Mr. Nelson, I will ask you to examine, in the Hill lease proper, the most essential clauses (handing book to the witness).

MR. REED: Shall we take a recess until next week while he does so?

MR. COLTON: It does not take so long to examine the essential clauses for a man who is familiar with it.

MR. LINDABURY: How many pages are there in the lease?

MR. COLTON: 135.

MR. LINDABURY: Oh, there are some exhibits, then?

MR. KELLOGG: Just let him glance through it. There are only about a thousand pages.

MR. COLTON: Have you a synopsis of the Hill leases, Mr. Kellogg?

MR. KELLOGG: I do not own such a thing.

MR. REED: In fairness to the witness, Mr. Colton, you can not ask him to testify on that with no preparation.

MR. LINDABURY: There are limits beyond which visions will not extend.

THE WITNESS: It will take some time to look that up. There are several pages missing here.

MR. COLTON: There are several pages missing?

THE WITNESS: Yes; from 72 to 77.

MR. KELLOGG: May I look at that for a moment? (After examining the book containing the Hill lease) I am sorry to have to correct you. They are all there. The pages are a little disarranged, but they are all there.

MR. COLTON: I see. It runs backwards and forwards.

MR. LINDABURY: Yes. Just let the witness go backwards and forwards and up and down and criss-cross and pick out the principal things.

THE WITNESS: That is quite a job (examining book).

By MR. COLTON:

Q. I will shorten this examination by giving you certain provisions from the lease, which you may assume to be a correct summary of the contents of the lease for the purpose of the questions that will be put to you.

MR. KELLOGG: Has the original document been examined completely, so that I may have it?

MR. COLTON: You may have it.

MR. KELLOGG: Not that I need it for the moment. I merely wanted to comment on the expedition with which you are going through it.

By MR. COLTON:

Q. I will not re-read those portions that have already been mentioned. (Reading:)

"The property leased consists of partly fee ore and partly leasehold ore in Minnesota, covering altogether something less than 40,000 acres of ore land and approximately 39,500 acres of ore land.

"The Great Western Mining Company, the lessee, a subsidiary of the Steel Corporation, agrees to ship all of the ore over the Great Northern Railroad to the port of Superior on Lake Superior. The term of the lease extends with respect to fee ore until all merchantable ore forty-nine per cent and richer in iron shall have been shipped; and, with respect to leaseholds, during the term of the leases under which such lands are held, less three months."

A special provision permits the cancellation of the lease by the United States Steel Corporation on January 1, 1915, upon giving two years previous notice. For ore less than forty-nine per cent, the total charge is fixed at $1.10 per ton, without change or annual increase, provided that if any ores are mined through sub-leases on which there is a higher royalty

payment, then the Corporation's royalty shall be equal to that stipulated in the original lease.

State whether or not sufficient information has been given you as to the alleged terms of the Hill ore lease, assuming all of the terms given to you in the course of this examination to be correct, to enable you to express an opinion in general terms as to whether the rate of royalty paid was high or low.

MR. KELLOGG: That is objected to on the ground that the witness cannot be properly asked to express an opinion upon a document of this importance without personal knowledge of the contents of the document, which has not been given by the assumption which counsel has made.

By MR. COLTON:

Q. Will you answer the question?

MR. REED: We concur in that objection, and join in it.

MR. LINDABURY: And we add to it that he needs also other information in regard to the general situation which he is not shown to have.

THE WITNESS: I am still of the opinion that the royalty on this ore at that time was high.

By MR. COLTON:

Q. Mr. Nelson, taking ore of the general average grade, Bessemer and non-Bessemer, as it is found in the Mesabi, state approximately the value of such ore in the ground during the period 1901 and 1902, or thereabouts.

MR. REED: Repeat that question.

(By request, the pending question was repeated by the stenographer.)

MR. REED: We object to that question for the reason that he has not yet been shown competent to give an opinion on that subject.

MR. KELLOGG: And we further object, not only on that ground, but on the further ground that since the value of the ore, as has been shown by some of the witness' previous testimony, depends largely upon surrounding conditions, such as the location of the ore and the condition of the ore, and the

railroad facilities adjacent, the amount of over-burden under which the ore is found, and many other physical and legal conditions, that no such question is calculated to throw light upon the points at issue in this case, and that the inquiry should be addressed to particular bodies of ore covered by certain particular leases or other contracts, of such a nature and located in certain particular territory. I should also add there that so far as the Great Northern interests are concerned the question relates to the years 1901 and 1902, and therefore is wholly immaterial as bearing upon the lease and the reasonableness of the royalties thereunder, executed in 1907.

THE WITNESS: It would be a matter that would have to be considered from individual standpoints. The property would have to be considered by itself. Some were sold at that time, or a little earlier, for a very few cents a ton. You would have to take into consideration the stripping cost, mine cost, and the quality of the ore. Then I think, besides, it would make quite a difference who owned the property.

By MR. COLTON:

Q. Taking ore of the grade approximately standard, Bessemer ore, the cost being approximately the average cost for the Mesabi range, what value would you place upon that ore?

MR. KELLOGG: Objected to, on the ground that it is too vague and speculative, that it does not sufficiently state facts upon which any opinion of value can be founded, and upon the further grounds specified in regard to the last preceding question, these objections now having been fortified by the witness' own very clear statement made in answer to the previous question.

MR. REED: We join in that objection.

THE WITNESS: It has not been customary to sell the fee properties up there, although there have been some fee properties sold. For instance, Mr. Gates bought a property over at Virginia, Minnesota, the Sauntry mine, which is a very good mine, but he paid very little for it. There are conditions that exist with each individual property that would have to be considered in making estimates of the value of the ore.

Now, I have a fee property on the Cuyuna Range; that is very good ore, has very good ore in it, ores running as high as 63 per cent, of good structure, and I would be glad to sell that property at 10 cents a ton to-day.

By MR. COLTON:

Q. Is there any method of arriving at a rough estimate as to the value of ore on the Mesabi Range?

MR. KELLOGG: That is objected to on the ground—

MR. COLTON: Wait a minute.

MR. KELLOGG: I thought you had finished.

By MR. COLTON:

Q. (Continuing) Of merchantable grade and above?

MR. LINDABURY: Let us have that question again, is it merchantable grade or above merchantable grade?

(By request, the stenographer repeated the pending question.)

MR. KELLOGG: I object to that on the grounds hereinbefore specified, and on the further ground that the witness has stated not only once, but twice, that each parcel of property must be considered in the light of its own circumstances.

MR. REED: We join in that objection. You might as well ask the value of real estate in New York City.

THE WITNESS: I wish you would repeat that question.

(The stenographer repeated the pending question.)

By MR. COLTON:

Q. (Continuing) As of the time 1901 and 1902?

A. Yes, the engineers would figure out the tonnage, the average iron content of the ore and the phosphorus, and so forth, and they would figure out the mine costs.

MR. LINDABURY: That is as to each particular property?

THE WITNESS: Yes, each individual property, and if it was a leasing proposition they would figure out what royalty they could afford to pay, and then it has been customary to figure—for instance, as a matter of illustration, if the ore to-day was worth a royalty of thirty cents a ton the cash price would be one-third of it. Actuaries have figured that out as being about fair, ten cents a ton, cash price.

MR. REED: Then that depends on the length of the lease?

THE WITNESS: Oh, yes; there are other things to be taken into consideration, the availability of the ore and everything.

By MR. COLTON:

Q. Take the period of 1901 and 1902, as previously stated, and state whether or not any increase in the minimum tonnage results in a reduction or increase in the rate of royalty.

MR. KELLOGG: The same objection as the objection made heretofore to this line of questioning.

MR. REED: We object to it as too vague and speculative.

MR. LINDABURY: It depending upon conditions not stated.

THE WITNESS: I have known cases where the royalty has been lower, or put on a sliding scale, where the minimum would increase. For instance, if the original minimum was 100,000 tons, if the lessee agreed to mine a million tons you would cut the royalty in two, say from twenty-five cents a ton down to twelve and a half cents. I think that is the way the Mahoning lease was eventually arranged, put on a sliding scale, so that the greater the mine tonnage produced, the lower the rate of royalty. That was done back in 1895 or 1896.

By MR. COLTON:

Q. As a general proposition, will you state whether or not the value of fee ore per ton of the same grade and having similar conditions as to cost of mining is greater or less than the prevailing rate of royalty per ton for such character of ore?

A. Will you repeat that question, please?

(The stenographer repeated the pending question.)

THE WITNESS: I do not believe I understand that.

By MR. COLTON:

Q. As a general proposition, would you be willing to pay as much for fee ore per ton, assuming it to have the same conditions as to mining cost as the leased ore hereinafter referred to as you would be willing to pay royalty per ton—for example, if the royalty rate on a given property, the lease having fifty years to run, were fifty cents per ton, and that was

the prevailing rate for that class of property, would you be willing to pay fifty cents per ton for the ore in the ground?

MR. REED: We object to questions as to what the witness would be willing to pay as immaterial.

MR. LINDABURY: It would depend upon the size of his bank account and the convertibility of his securities.

THE WITNESS: Well, I think, in my position, I would rather have the lease on a royalty basis than to buy fee ore.

By MR. COLTON:

Q. Assuming that you had for the purposes of sale or lease a fee property and you can make a 50 year lease in regard to the property, carrying one-fiftieth of the tonnage in the mine to be taken out each year, the rate of royalty to be 50 cents, state whether or not you would dispose of the property in question at a lower rate per ton than 50 cents.

MR. REED: That is objected to, because the defendants are not to be judged by Mr. Nelson's personal preference.

THE WITNESS: Well, I think I would rather lease the property than to sell the fee, because there is always a chance that the mine will produce more ore than the original estimate, so it is really better to lease the mine than it is to sell it.

By MR. COLTON:

Q. Did you understand that I assumed that there was one-fiftieth of the tonnage to be taken out each year?

A. Yes.

Q. So that, assuming the estimate to be perfectly accurate, there would be no possibility of any tonnage being left over and left in the hands of you as fee owner at the end of that time?

A. You would not allow them to mine more than the minimum. Is that the idea?

Q. The minimum is so arranged that it will take exactly one-fiftieth each year.

MR. LINDABURY: It will take exactly 50 years to take it out.

THE WITNESS: They always mine more than the minimum. I would have to think about that.

By Mr. Colton:

Q. Take your time.

A. I have never known of a case of that kind. It is a little different from anything I have heard of.

Mr. Lindabury: You had no experience in that kind of leasing?

The Witness: No.

By Mr. Colton:

Q. Are you speaking from the viewpoint of the lessee or from the viewpoint of the fee owner?

A. The fee owner.

Q. Would you rather have 50 cents per ton royalty to be paid year by year as the ore is produced than to have the total amount of tonnage multiplied by 50 cents to start with?

A. Oh, no.

By Mr. Reed:

Q. Would you prefer the tonnage to the royalties?

A. You mean to get 50 cents cash at the time?

Q. Yes.

A. Of course, I would rather take that, but that is not the way they figure them; the cash basis is figured one-third.

By Mr. Colton:

Q. How do they figure them then?

A. Well, if you get a property that will lease at 50 cents a ton and you want to sell the fee, they figure out that the fee, providing everything is all right and so on, they figure out that the fee is worth one-third of that, or sixteen and a fraction cents a ton.

Q. Now, suppose they figure the fee to be worth 25 cents a ton, would you rather have 25 cents to be paid at once, or the royalty to be paid for the number of years that it would take to exhaust the mine?

Mr. Lindabury: Taking the chance of losing it by bad investment, do you mean?

A. That is one of the considerations that would have to be taken into account. If you get all your money at once

you can fool it away; and there is another thing; usually these mines produce more ore——

By Mr. Colton:

Q. You could invest it in Government bonds if you got it all at once, couldn't you?

A. Yes.

Q. That is fairly safe?

A. Yes.

Q. If you got all your money—

Mr. Lindabury: They don't invest in Government bonds out in Mesabi.

By Mr. Colton:

Q. You could do it though.

A. Yes, but on the other hand, if you lease your property then you have the advantage of deriving a benefit from any increased tonnage that is found in the property.

Q. In this case we are assuming, of course, that they have made an accurate estimate.

A. I think I would take the cash right now.

By Mr. Lindabury:

Q. And take chances on what you would do with it?

A. Yes. I am trying to sell one right now.

Q. Are you familiar with the reports of the Minnesota Tax Commission for the years 1908 and 1910?

A. No, I cannot say that I am. I have seen them, but I am not very familiar with them.

Q. Do you know how those reports are regarded as to their estimate of tonnage?

A. Yes.

Mr. Kellogg: That is objected to on the ground that you are asking now the witness' knowledge of a matter of a common impression as to the effect or nature of a written official document; which is a new form of evidence to me.

Mr. Lindabury: You are learning law if you stay with us.

Mr. Kellogg: This is a little new.

Mr. Colton: Will you repeat the question, please?

(By request, the stenographer repeated the question as follows):

"Q. Do you know how those reports are regarded as to their estimate of tonnage?"

MR. COLTON: Add to that: "among mine owners and persons familiar with the business in Minnesota."

MR. REED: Objected to as irrelevant and immaterial.

THE WITNESS: The Tax Commissioner generally is supposed to have all the data that is available in making these estimates, and I believe it is generally conceded that they are as accurate as possibly could be.

MR. KELLOGG: I think I will have to note a motion to strike out, which I don't usually do, based upon the statement of the witness as to what is generally supposed.

MR. COLTON: The Government produces the report of the Minnesota Tax Commission for the year 1908, and offers in evidence so much of it as relates to ore or the taxation thereof, to wit, Chapters 8 and 9, being pages 110 to 148 inclusive; and then I want to add the title page to that, if you have the 1908 report there.

MR. REED: I just want to see how much you are offering.

MR. COLTON: Chapters 8 and 9, pages 110 to 148 inclusive. I intend to offer everything that relates to ores for the year 1908. I offer in evidence also the title page.

MR. LINDABURY: Will you not read that?

MR. COLTON: The title page?

MR. LINDABURY: Yes. It is very short, is it not?

MR. COLTON: Yes. (Reading:)

"First Biennial Report of the Minnesota Tax Commission to the Governor and Legislature of the State of Minnesota, Frank L. McVeagh, Samuel Lord, O. M. Hall, Commissioners, Rukard Hurd, Secretary. St. Paul, Minnesota, 1908."

The Government produces the report of the Minnesota Tax Commission for the year 1908 and asks to have the same marked in evidence, and offers in evidence so much of it as relates to ore or the taxation thereof, to wit, chapters eight and nine, being pages 110 to 148, inclusive, together with the title page.

The intention of the offer is to cover everything that relates to ore in the book.

MR. REED: We think you had better print it all.

MR. KELLOGG: We object to the offering of this report in evidence upon the ground that it is immaterial, irrelevant and incompetent as to any issues involved in this litigation in which we are interested.

(The portions of the report referred to in the offer by counsel for the Government were thereupon marked Government Exhibit No. 342, January 28, 1913.)

MR. COLTON: The Government produces a report of the Minnesota Tax Commission for the year 1910, and offers in evidence so much thereof as relates to ore or the taxation thereof, being chapter six, comprising pages 49 to 89, inclusive, together with the title page.

The title page reads as follows:

"Second Biennial Report of the Minnesota Tax Commission to the Governor and Legislature of the State of Minnesota, 1910. Syndicate Printing Company, Minneapolis, Minn."

MR. KELLOGG: The same objection.

MR. REED: We have no objection.

(The pages in the report mentioned, referred to by counsel for the Government, were thereupon marked Government Exhibit No. 343-344, January 28, 1913.)

MR. COLTON: That is all.

CROSS EXAMINATION.

By MR. REED:

Q. In what county is the Cuyuna Range situated?

A. Crow Wing County.

Q. The Minnesota Tax Commission appears to have made no assessment of either tonnage or value of iron ore in Crow Wing County in 1910, is that correct?

A. I believe that it correct. That district is very new. There is just one mine that I know of that was partially developed in 1910; that is the Kennedy Mine. It shipped a little ore in 1911.

Q. Mr. Nelson, Mr. Colton has asked you about the traf-

fic contracts which have been made by a number of these mines with the railroads. Will you state whether or not it has been the custom of all of the railroads to require traffic contracts of that kind?

Mr. Colton: Of what kind?

Mr. Reed: Of the kind of which you spoke in your direct examination, limiting shipments of ore to that road with which the contract was made.

The Witness: That has been customary, to have a traffic contract and agreement to ship over a certain line of railroad.

By Mr. Reed:

Q. The Great Northern Railway Company has required those contracts in the same way, has it not?

A. Yes, sir.

Q. And that has been the custom there since long before the Steel Corporation was formed, has it not?

A. Yes, sir.

Q. Those contracts all oblige the mine owner to ship over that railroad with which the contract is made only so long as equally good service is offered by that railroad; is not that so?

Mr. Colton: I object to the question unless it is shown that the witness knows as to each of the varying forms of contracts.

The Witness: I do not think you can get away from them.

By Mr. Reed:

Q. I am not asking whether you can get away from them, but is it not a fact that they oblige the mine owner to ship over that particular railroad only so long as it offers equally low rates and equally good service as its competitors at the same point?

A. I believe that is a fact; but I have never known of a traffic contract being broken.

Q. The rates have been uniform and the service has been practically uniform?

A. The rates have been uniform, but not the service.

Q. I want to ask you about this matter of washing ore, about which you testified. For how long have experiments

been carried on at Coleraine with a view to developing this new method of utilizing the low grade ores?

MR. COLTON: I object, on the ground that it is not shown that the witness knows when they began the process, or that he has any knowledge in respect to the same.

THE WITNESS: They were experimenting there for several years as to this washing.

By MR. REED:

Q. Who was doing that experimenting?

A. John Greenway.

Q. For what company?

A. The United States Steel Corporation.

Q. Did any other corporation or any other individual mine owners or any other person conduct similar experiments at any point on the Mesabi Range?

A. Yes, sir.

Q. Who?

A. Walter Barrows, and several other gentlemen whose names I do not recall now, experimented there at Coleraine, before Coleraine was started. That was some years ago. They had a log washery in there. They brought it from down in Tennessee, and they carried on some experimental work there, and then they dropped it. Shortly afterward the Steel Corporation took it up and made a success of it.

Q. These other men who had it first did not make a success of it, did they?

A. I believe they did, only they did not have the capital to carry the proposition through. They did not have the railroad facilities. They did not have the capital.

Q. Does it require very much capital to install a washing plant big enough to be economical?

A. Yes, sir.

Q. Can you give us any idea how much capital is required for that?

A. I have heard that the plant there at Coleraine cost one and a half million dollars.

Q. Whether it was for want of capital or for some other reason, the experiments which were first made by these other

gentlemen were abandoned and nothing further was done by them; is that right?

A. Yes, sir; they did not make a commercial success of it.

Q. Then the Steel Corporation took it up?

MR. COLTON: I object to that on the ground that the date is not given, and that might be material on the question of abandonment.

MR. REED: You mean you might object?

MR. COLTON: I do object on that ground.

By MR. REED:

Q. Just to oblige Mr. Colton, Mr. Nelson, will you give us the date at which these other gentlemen abandoned their experiments, as near as you remember it?

MR. COLTON: I shall object further on the ground that it is not shown that the witness knows that they abandoned the experiments.

MR. LINDABURY: He said so.

MR. COLTON: But it is not shown how he knows? I object to it as hearsay, incompetent, irrelevant and immaterial until it is shown how he knows.

MR. REED: I presume you know all of this as well as you know what you told Mr. Colton on direct examination?

MR. COLTON: I object to incorporating my entire examination in a single sentence, and to the question as improper.

THE WITNESS: I don't just remember about the date, but it seems to me it was back about 1904 or 1905.

By MR. REED:

Q. Then about how long were the Steel Corporation's experiments?

A. Then, it was some time before they went in there, and they were experimenting for two or three years.

Q. And then they built a large plant for practical operation, did they?

A. Yes, sir.

Q. That is out at Coleraine?

A. Yes.

Q. About when was that plant completed and put in operation?

A. Well, I should say that that plant, the first season they shipped from that plant must have been in 1910.

Q. And if I remember, your direct examination correctly, you testified that in 1911 about 5 per cent of the shipments from the Mesabi Range were of concentrates from that plant; is that correct?

A. Yes, I think that might be a little bit too much, because it took some time to work those shipments up. At the present time—

MR. COLTON: I object to any statements as to the present time, to any statement subsequent to October 26th, 1911.

By MR. REED:

Q. Will you please finish your answer, and tell us what you were going to say about the shipments at the present time?

A. Well, my judgment would be that the shipments of concentrated ore at that time from the Mesabi Range are close to 10 per cent of the total tonnage.

Q. About what per cent of the ore in the Mesabi Range consists of this ore containing free silica which can be washed out in a concentrating plant? Of course, I understand that you can give us only a rough approximation, but would you say that 50 per cent of the ore was of that character?

A. No, I would not say that.

Q. About what per cent—40?

A. Well, it would be just a guess.

MR. COLTON: I object to the witness testifying at all on the subject after having himself admitted that it would be a mere guess.

By MR. REED:

Q. Give us your best estimate, please.

MR. COLTON: I object further on the ground that it is not shown that the witness has any peculiar knowledge of the quantities of this ore, and on the ground that experiments have not been conducted over a sufficiently long time to justify the witness in reaching any conclusion on the subject.

THE WITNESS: I should think about 20 per cent, or 25.

By MR. REED:

Q. 20 or 25 per cent of the ore of the Mesabi Range?

A. Yes.

Q. And until this concentrating plant had been erected and put in operation that 20 or 25 per cent of the ore of the Mesabi Range was useless, was it not?

A. Practically; it was not used at any rate.

Q. So that the work which the Steel Corporation has done there has resulted in giving to the country the use of that part of the ores of the Mesabi Range which were useless before?

MR. COLTON: I object to an answer to that question on the ground that it calls for a conclusion, and that it does not appear that, but for the fact of the ownership of railroads by the Steel Corporation and high rates of transportation, the ore in question would not have been developed long before by independent companies.

By MR. REED:

Q. Do you remember the question?

A. Yes. My answer is yes.

Q. You told us on your direct examination about some of the leases that you yourself made in 1902, 1903 and 1904, and I note that the royalties in those leases ranged around 27 and 29 cents. There was no such rise in the prevailing rate of royalty about the time that the Steel Corporation was formed, was there, or did everybody suddenly become desperate and make a wild rush for ore at any price?

A. No, there was quite a lull in the ore business for a time.

Q. As the Minnesota Tax Commission has made no estimate of the tonnage of ore in the Cuyuna Range, and as you own ore lands there, I wish you would give us your estimate of the total tonnage that has thus far been developed in the Cuyuna district.

MR. COLTON: I object to that on the ground that it is not shown that the witness has any way of arriving at that, or knows anything about the estimates in that range. You might at least show that he knows something about the subject on which you are asking him to testify. It is new matter.

MR. REED: Answer the question, please.

THE WITNESS: It is rather difficult to make an estimate on the tonnage of the Cuyuna Range. It is a different for-

mation from the Mesabi Range. The Mesabi Range is a blanket formation, and they could get a very accurate estimate on every forty through drilling, and measure up the ore bodies there very accurately. On the Cuyuna Range there is a big vein system.

By Mr. Reed:

Q. It resembles the ore formation of the Gogebic and other hard ore ranges.

A. Yes, Michigan. Take our property up there, for instance. We have got to drill holes down there, and we have drilled them down 740 feet, and we know it goes down that depth, but we do not know anything about whether it continues any further, because that is as deep as we have drilled.

Q. Can you give us any idea of the amount of ore that has been shown up up to the present time?

Mr. Lindabury: Down to that depth of drilling.

The Witness: The tonnage would not be so very large. No, I would not suppose that it was over 150,000,000 or 200,000,000 of tons, if there is that much.

By Mr. Reed:

Q. Do you think 150,000,000 tons is a conservative estimate? I want to get your best judgment on it.

Mr. Colton: This is a new subject. I object to the question as leading and on the ground that the witness has already said, "if there is that much," and on the further ground that he has stated that it is very difficult to arrive at any estimate in this region.

The Witness: I think the possibilities there are great.

Mr Colton: I move to strike that out. We do not wish mere possibilities.

By Mr. Reed:

Q. The possibilities are great?

A. The possibilities are great of developing more ore there.

Q. But you do not feel that it is safe to estimate, on present development, more than 150,000,000 or 200,000,000 tons?

A. No, I think that would be a very liberal estimate.

Q. What would you say was a fair estimate?

A. I do not know, and I have been underground in every mine up there too. Well, that is as near an estimate as I can make.

Q. Which figure?

A. 150,000,000, I think that would be a very liberal estimate on the tonnage shown up now.

Q. But you do not undertake to prophesy the tonnage that will be shown up by further development work, of course.

A. I want to say in that connection that I had a talk with Mr. Rukard Hurd.

MR. COLTON: I object to any hearsay as to what talk he had with Mr. Rukard Hurd.

MR. LINDABURY: You had a talk on the subject.

THE WITNESS: Yes, with the Tax Commissioner, and he said it was very difficult to make any estimate on that range up there.

MR. COLTON: I withdraw my objection.

By MR. REED:

Q. Mr. Colton asked you for the shipments from the Cuyuna Range in 1910 and one or two other years, but he seems to have neglected to ask you the shipments in 1911 and 1912.

MR. COLTON: I think I asked for 1911 up to October 26th. I object to shipments beyond that date on the ground that that was the date of the suit against the Steel Corporation.

By MR. REED:

Q. Will you give us, if you please, the total shipments from the Cuyuna Range in the whole of the year 1911?

MR. COLTON: I object further on the ground that there are statistics on the subject which are better evidence.

THE WITNESS: I intended that estimate of mine to cover the whole year.

By MR. REED:

Q. The whole year?

A. Yes; I think it was 57,000 tons.

Q. In 1912, Mr. Nelson, about what were the total shipments?

A. About 150.

Q. 150,000,000?

A. No, 150,000 tons.

Q. I mean 150,000.

A. Yes, sir.

Q. What railroad service have you in the Cuyuna Range?

A. The Soo Line and the Northern Pacific.

Q. Neither of those is controlled by the Steel Corporation, so far as you know?

A. No, sir.

Q. Does the Steel Corporation, as far as you know, own any ore or ore lands in the Cuyuna Range?

A. Not to my knowledge; no, sir.

Q. Is the bulk of this ore in the Cuyuna Range pre-empted by other furnace companies, or is it in the hands of individuals from whom furnace companies can buy it if they wish and if they agree on terms?

A. The furnace people are in there pretty strong.

Q. The Rogers-Brown Ore Company have bought quite a lot of land, have they not?

A. Yes; and the Tod & Stambaugh people.

Q. But the large part of it is still held by private owners like yourself?

A. Yes, sir.

Q. Who are willing to sell if your price is agreed to?

A. Yes.

Q. You were with the Duluth, Missabe & Northern ever since 1893, I think you told us.

A. Yes, sir.

Q. The Steel Corporation did not build that road, did it?

A. No, sir.

Q. It was built by the Merritts, was it not?

A. Yes.

Q. To develop some ore lands which they owned in the Mesabi Range?

A. Yes.

Q. Just as the Duluth & Iron Range was built by the owners of other land to reach their properties?

A. Yes.

Q. How much did they charge per ton freight from the

Mesabi Range to Lake Superior ports when that road was first opened for operation by the Merritts?

A. Eighty cents a ton.

Q. The rate has remained eighty cents a ton down to the year 1911, has it not?

A. Yes.

Q. Without change?

A. Yes.

Q. When the Steel Corporation got the road, they made no change in the rate; is that right?

A. Not until—

Q. I mean not until 1911?

A. Yes, sir.

MR. COLTON: I object to the statement "until 1911;" it is not shown whether the change went into effect prior to the bringing of the Government suit and was brought about by the bringing of the Government suit.

By MR. REED:

Q. Mr. Colton has asked you a lot of elementary questions in arithmetic, Mr. Nelson, as to whether you would rather have fifty cents a ton today or fifty cents fifty years from now. I will ask you, do you think the reduction of the rate was caused by the Government's suit, if as a matter of fact it was announced before the bringing of the Government's suit was announced.

MR. COLTON: I object because the announcement of a rate is different from the going into effect of a rate; it is not shown the rate went into effect before the Government brought this suit.

MR. REED: In view of Mr. Colton's objection I will withdraw the question.

MR. LINDABURY: They announced it before the Government suit, but it did not go into effect until after then.

By MR. REED:

Q. Mr. Nelson, I do not believe that you mean to testify that you think the owner of a railroad, whoever the owner may be, is not entitled to have some return on his investment.

A. No, sir.

Q. And you do not mean to contend or to testify that the Steel Corporation, being the owner of those two railroads, ought to do the work for every one at cost?

A. Oh, no; no, sir.

Q. It is entitled to receive a reasonable return on the investment?

A. Yes, indeed.

Q. And that investment is not necessarily determined by the capital stock of the railroad?

A. Not necessarily.

Q. Now, if I have correctly understood your testimony on direct examination, the making of a rate that was excessive for the carriage of ore from the Mesabi Range to Lake Superior would naturally impose an excessive toll on the other mine owners and the other furnace companies that consumed ore?

A. Yes, sir.

Q. And it would be presumed that if they felt that the rate was excessive, they would ship as little ore as possible over the Steel Corporation's road; is not that so?

A. Not necessarily, because the Steel Corporation's roads give very good service.

Q. They do give good service?

A. Fine.

Mr. Colton: I move to strike out that answer on the ground it is not shown the witness knows what sort of service is given over the Corporation's roads, and I object to the question as improper, as it is not shown that there is any choice of rates in that region.

By Mr. Reed:

Q. Do you happen to know what per cent of the ores of Jones & Laughlin Company are tied up by traffic contracts with the Steel Corporation's roads? Mr. Jones testified—

Mr. Colton: I object to any statement of what Mr. Jones testified to. I think the witness should be allowed to answer. You have asked the question. Now you want to tell him something. He ought to be allowed to answer, and I call attention to the fact that the witness is attempting to answer your question.

By Mr. Reed:

Q. Just finish your answer, Mr. Nelson.

A. May I have the question read?

(The question was thereupon read by the stenographer as follows:)

"Q. Do you happen to know what per cent of the ores of the Jones & Laughlin Company are tied up by traffic contracts with the Steel Corporation's roads?"

The Witness: No, sir, I do not.

By Mr. Reed:

Q. It has been testified by Mr. B. F. Jones, who was president of the Jones & Laughlin Steel Company, and a witness for the Government in this case, that sixteen per cent of the ore in the mines which they were now working was bound up by traffic contracts to the Steel Corporation's roads, but they actually were shipping, I think he testified, about forty-six per cent of their ore over the Corporation's roads. When a large independent steel and iron producer like the Jones & Laughlin Steel Company ships three times as much ore over the Steel Corporation's roads as it is required to, it is apparent, is it not, that the disadvantages to the independent steel companies in shipping over the Steel Corporation's roads have been somewhat exaggerated?

Mr. Colton: Just one moment, if you are through with the question.

Mr. Reed: I am through.

Mr. Colton: I object to the question on the ground that it is not shown but that Jones & Laughlin required that particular character of ore in their business, and on the further ground that none of the many circumstances that might have entered into the reason for Jones & Laughlin shipping over the Corporation's road is either shown, nor is it shown that this witness has any knowledge of it.

Mr. Reed: Will you answer the question, please?

(The question was thereupon repeated by the stenographer as follows:)

"Q. It has been testified by Mr. B. F. Jones, who was

president of the Jones & Laughlin Steel Company, and a witness for the Government in this case, that sixteen per cent of the ore in the mines which they were now working was bound up by traffic contracts to the Steel Corporation's roads, but they actually were shipping, I think he testified, about forty-six per cent of their ore over the Corporation's roads. When a large independent steel and iron producer like the Jones & Laughlin Steel Company ships three times as much ore over the Steel Corporation's roads as it is required to, it is apparent, is it not, that the disadvantages to the independent steel companies in shipping over the Steel Corporation's roads have been somewhat exaggerated?"

THE WITNESS: I think that the service over the Steel Corporation's roads has always been first class; they have always furnished cars; they have always given the service, and in that way there is no criticism by anybody on the service.

By MR. REED:

Q. There has never been the slightest descrimination against the competing companies in the furnishing of service by those roads, has there?

A. No, sir; not that I know of. They are very good that way.

Q. It is a fact, is it not, Mr. Nelson, that for a good many years you have had in Minnesota a Railroad and Warehouse Commission, which had authority, or was believed to have authority to reduce excessive rates charged by common carriers?

A. Yes, sir.

Q. And it is true that the Duluth & Iron Range and the Duluth, Missabe & Northern Railroads are wholly within the State of Minnesota, is it not?

A. Yes, sir.

MR. COLTON: I move to strike out any reference to whether the State of Minnesota has any Warehouse Commission on the ground that the laws of that state are the best evidence, and I would like to add that it is not shown but that the shipments of ore—but that it is customary for the shipments of ore to move continuously in interstate commerce.

By Mr. Reed:

Q. You have told us, Mr. Nelson, that for two years you owned a property called the Wyman property, which contained both Bessemer and non-Bessemer ore. In what part of the Mesabi Range was that located?

A. That was over in the western Mesabi.

Q. And it was served by what railroad or railroads?

A. Well, the Great Northern was the nearest line at that time.

Q. The Great Northern was the nearest line?

A. Yes, sir.

Q. And you had ore of a fairly good grade?

A. Yes, had some nice ore.

Q. Did you have a lease on that?

A. Yes.

Q. For how many years?

A. I think—

Q. I mean how many years did the lease have to run?

A. Fifty years.

Q. At what royalty?

A. Forty cents a ton.

Q. You made that lease about 1906, did you not?

A. I took the option in 1906, and then called for a lease in 1907, the 1st of January, 1907.

Q. When did you drop the lease?

A. I dropped it in 1908.

Q. Approximately what tonnage of Bessemer ore had you there?

A. It was a small tonnage; a few hundred thousand tons of Bessemer ore.

Q. Fairly high in iron?

A. Yes; good ore.

Q. Approximately what tonnage of non-Bessemer did you have?

A. There was a big tonnage.

Q. Could you tell us how many tons?

A. My recollection is that it was three or four million tons or five million tons.

Q. Three or four or five million tons?

A. Yes, sir.

Q. You dropped that in 1908; about what time in the year 1908?

A. Shortly after the first quarter.

Q. In the spring of 1908?

A. Yes; that is my recollection.

Q. That is a year after the Hill lease was made?

A. Just about.

Q. In the course of that year had you made it known to any of the indepndent ore consumers or furnace companies or steel companies that you owned three or four or five million tons of ore of good grade at that location which you were willing to sell?

A. Yes, sir.

Q. Just tell us the names of some of those that you offered that lease to?

A. I offered it to the Great Northern people several times. I offered it to the Steel Corporation. I offered it to—well, I went down the line and offered it to pretty nearly everybody.

Q. You offered it to practically everybody that buys ores, did you?

A. Yes; I was pretty desperate, I tell you.

Q. And, in spite of the fact that, by the Hill lease, we had monopolized all the ore in Minnesota, and our competitors were desperate for ore, and in spite of the fact that the royalty was only 40 cents a ton, and that it was good ore, and a fifty year lease, you could not find anybody in all that line to buy?

A. Of course, there were certain features against this property.

Q. Tell us about some of them. What were some of the unfavorable features?

A. It was a washing proposition.

Q. It was a washing proposition?

A. A good deal of it; a high silica ore.

Q. Yes.

A. It was an underground proposition, and—

Q. Yes. There are lots of underground mines working on the Misabi today, are there not?

MR. COLTON: I do not think he has quite finished his answer.

MR. REED: No. I did not mean to stop him. I just interjected that question: There are a good many underground properties working up there today, are there not?

THE WITNESS: Yes; but you have to have a pretty high grade mine to work it underground.

By MR. REED:

Q. Then, in spite of this dreadful scarcity of ore which we have caused, you found that the independents were still rather finical about their purchases; that they were not taking everything that was offered to them?

MR. COLTON: Will you not let him finish that answer which he was making a moment ago?

MR. REED: Certainly.

MR. LINDABURY: You stated that it was a washing proposition, a high silica ore, and that it was an underground proposition. The question is whether there were any more unfavorable features.

THE WITNESS: Then I might say people were a little bit sceptical as to whether it was a washing proposition. That is, the mine not being opened up, they could not see the character of the ore.

MR. LINDABURY: They did not know it would wash?

THE WITNESS: That is the idea. They were a little bit sceptical.

MR. COLTON: That is very good. It had to be washed, and they did not know whether it would wash.

By MR. REED:

Q. Those disadvantages of which you speak are common to many properties that were included in the Hill lease, were they not?

A. I think so.

Q. Mr. Lindabury, whose mind turns to farming, I find, has suggested several questions that seem to bear on this matter of the ownership of railroads. He would like to have your opinion on this question:

If two neighbors own truck farms, and one has a wagon

to transport his truck to market and the other has not, would that one have an advantage over the other on this account?

MR. COLTON: That is objected to as irrelevant and immaterial, and not proper cross examination.

By MR. REED:

Q. How would you answer it?

A. I think he would have an advantage.

Q. If the one that did not have a wagon was obliged to hire the other to carry his produce, would that increase the advantage that the other had?

MR. COLTON: That is objected to as not a proper subject for expert testimony.

MR. LINDABURY: It is based on the direct questions he was asked on direct examination.

MR. COLTON: (Continuing) And he has not been shown to be a farmer or truck driver, or to know anything about horses, carriages, mules, donkeys or other animals.

MR. REED: I suppose it is all the same, whether it is ore or cabbages.

(By request, the stenographer repeated the pending question as follows:)

"Q. If the one that did not have a wagon was obliged to hire the other to carry his produce, would that increase the advantage that the other had?"

THE WITNESS: It depends on how much he charged the other fellow for the service. If he charged him a fair rate, it would not be very material.

By MR. REED:

Q. The one with the wagon would still get the profit?

A. Yes; he would have that.

Q. And the other one would be out that charge?

A. Yes.

Q. And there would be an advantage, then, without regard to whether the rate was reasonable or not?

A. Yes; more or less.

Q. Then ought not a truckman to be prohibited from run-

ning his own wagon, or transporting his own or his neighbor's crop?

Mr. Lindabury is anxious to know how else competition, free and unhampered and uncorrupted competition in cabbages can be kept up.

MR. COLTON: I think Mr. Lindabury ought not to be referred to. He can speak for himself.

MR. REED: I did not want to take the sole responsibility.

THE WITNESS: No; I do not think that ought to be stopped, but it ought to be regulated so that he would not overcharge him.

MR. LINDABURY: The charges should be regulated?

THE WITNESS: Yes, the charges should be regulated.

By MR. REED:

Q. And that is what Utilities Commissions are for?

A. Yes.

MR. COLTON: I object to the examination of this witness as to what Commissions are for.

MR. REED: I think that is all.

CROSS EXAMINATION.

By MR. KELLOGG:

Q. You were asked quite a number of questions, as I remember, about the royalty rates way back in 1900, 1901 and 1902. I am correct, am I not, in thinking that the rates of royalties have increased very substantially since that time in all parts of the Mesabi range?

A. Yes, very materially since that time.

Q. The testimony which you gave indicated to me, unless I misunderstood you, that in trying to fix the value of a given body of ore it was necessary to study the particular situation of the ore, the physical location of it, the amount of the over-burden, the question as to whether it was wet or dry country down where the ore lies, the question of its proximity to a railroad, and in fact all the other circumstances of the particular case. Was I correct in so understanding you?

A. Yes.

Q. And I think you also added that the question of the

person that owned the ore was one that you yourself would think ought to be considered?

A. I think that makes a difference.

Q. Would you mind enlarging on that a little more fully, and explain what you had in mind in making that answer.

A. Well, for instance, if a man like Mr. Hill owns a lot of ore, he could command a better figure for his ore than I could get for mine, because he is in a position to go ahead and carry his ore and build blast furnaces and steel plants, and do everything. I am not; I have to sell my ore, and sometimes I have to sell it pretty quick too.

Q. In other words—oh, did I interrupt you?

A. I might have to make a quick turn.

Q. In other words, to be personal, since you have been, you might possibly find yourself handicapped a little under certain conditions, by lack of financial backing, which perhaps others might be able to invoke?

A. Yes.

Q. And perhaps you might not be able to get the value of your ore out that somebody else would who might be better equipped for that purpose?

A. It makes a difference.

Q. And that would apply, in part, to the question of finance as you have already stated, and any particular question of transportation. That is, the Hill interests, for instance, being in possession of a transportation system, were not subject to a handicap that a man might be subjected to if he did not have a transportation system. That is a fair statement, is it not?

A. Yes.

Q. And a man that did not have any of these handicaps is better able to get a higher value for his property than a man who is subject to those handicaps; is not that true?

A. Yes.

Q. For instance, if he has enough financial backing, a man might utilize his ore bodies in one of several different ways. He is not compelled to lease or to sell to somebody else?

A. No, sir.

Mr. Colton: I object to that question about one of several different ways on the ground that there is no specification of

the different ways that the ore properties can be used, and the question is meaningless.

Mr. Kellogg: I think it explains itself very clearly.

By Mr. Kellogg:

Q. Also in estimating what should be a proper consideration upon a given lease of a given ore body, that also depends upon the individual characteristics of the ore body and in particular upon the nature of the particular lease, does it not?

A. Well, there are a lot of things to take into consideration.

Q. That is just what I understood you to say. Am I wrong in thinking that there are so many things that have to be taken into consideration that it is absolutely necessary, in any lease of importance, to study that particular lease and study that particular ore body, and study all the circumstances of the case before a man can reach a reliable conclusion as to what is right and fair under the circumstances?

(By request, the question was repeated.)

The Witness: There is really only one way to figure values of ore, and that is after figuring the mining costs and the transportation costs by the unit system; the values of the units of ore on Lake Erie. That is the way all the ore is sold.

By Mr. Kellogg:

Q. That is the price at which ore of a given grade would sell at lake ports on Lake Erie, after being mined and transported down the lake to the Lake Erie ports. Is that what you meant by that answer?

Mr. Colton: I want to make an objection to the answer on the ground that it is not responsive to the question.

The Witness: Yes:

By Mr. Kellogg:

Q. And of course that involves, does it not, I mean to say that computation involves a consideration of the particular ore bodies, of their location and their nature and extent of the metallic content, etc. etc., the amount of distance of the transportation, the cost of mining, and those other points; I think there were some others to which you alluded in previous answers. Is that correct?

A. Yes.

Q. And by making that comparison in a given case you feel that a reasonable valuation of what that particular ore is worth could be reached, if I understand you correctly?

A. Yes, and I suppose the prevailing prices.

Q. Prevailing prices at lake ports, of course?

A. No, I mean lease prices up there would have a bearing too, certainly.

Q. What prices do you refer to now? I do not get that.

A. What other people were buying and selling properties for.

Q. That would depend a little bit on whether you were planning to sell your ore, or whether you were planning to develop it yourself?

A. Yes.

Q. If you were planning to develop it yourself, the only price would be the price at Lake Erie ports to which you would deliver it?

A. Yes.

Q. If you were going to sell it to somebody else, that would be another story?

A. Yes.

Q. In other words, the whole thing is very largely an individual proposition? It must be considered by itself in any lease of special importance; is not that so?

A. More or less it depends upon the individual properties, conditions and so forth.

Q. And individual ownership, as you have stated.

A. Individual ownership.

Q. Now, have you ever made a personal examination of all the properties included in the Hill lease?

A. No.

Q. I suppose you do not even at the moment know, you could not give us a full description of all those properties now?

A. Not all of them.

Q. I am quite sure I could not. I do not know whether you could or not. You of course have made no personal drillings, or personal examination of the qualities of the ore

in the various bodies, have you, except in some circumstances?

A. In some instances I have.

Q. How many instances, roughly speaking, out of the total number of ore bodies?

A. Two.

Q. Which mines are those, or which ore bodies are those?

A. 28 and 29, the St. Anthony property.

Q. Other than the St. Anthony properties, you have not made any personal examination of any of the other ore bodies included in this Hill lease; that you can now remember, that is?

A. No. I do not think I have.

Q. Now, looking at this dainty little volume which I hand you, which comprises over a thousand printed pages and which includes—

MR. COLTON: I object to the statement that the volume comprises over a thousand pages, without specifying as to whether—

MR. KELLOGG: I am going to add the appendices. You cut me off in the middle.

(Whereupon, at 4:15 o'clock p. m. an adjournment was taken until tomorrow, Wednesday, January 29, 1913, at 10:30 o'clock a. m.)

FORTY-SECOND DAY.

EMPIRE BUILDING, 71 Broadway,
New York City.

WEDNESDAY, January 29, 1913.

Before Special Examiner JOHN ARTHUR BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED; also, on behalf of the Great Northern Iron Ore Interests, MR. FREDERICK R. KELLOGG and MR. CHESTER W. CUTHELL.

P. H. NELSON,

a witness produced on behalf of the United States, having been previously sworn, testified further as follows:

CROSS EXAMINATION (Continued.)

By MR. KELLOGG:

Q. Mr. Nelson, at the close of yesterday's hearing I was about to ask you whether you had, as a matter of fact, ever read the Hill lease. I was showing it to you at the time. It was a volume consisting of some 135 odd pages in the lease proper, and with its various appendices, subleases, and so forth, comprising about 1,000 pages. Have you ever, as a matter of fact, read that through?

A. I have read the main lease.

Q. You have read the 135 page lease?

A. Yes.

Q. When was that, if you recall?

A. Immediately after it was made.

Q. Back in 1907?

A. Yes.

Q. What was it that you said yesterday as to the royalty prices in 1904, 1905, 1906 and 1907?

MR. COLTON: Do you think that is proper, to ask the witness what he said yesterday?

MR. KELLOGG: Yes; I am asking him what he said.

MR. COLTON: Do you not think it would be better to ask him what is the fact?

MR. KELLOGG: No, I want to get at—

MR. COLTON: The record shows what was said yesterday.

MR. KELLOGG: I think the question is perfectly proper. I do not mean to ask him for the words, but for the substance of what he said yesterday on that subject.

MR. COLTON: He might have misstated it yesterday, by accident.

MR. KELLOGG: I ask the substance of what he said yesterday. That is what I am asking for.

MR. COLTON: I object to the question of yesterday as too broad, to state the substance of what he said yesterday.

MR. KELLOGG: There is no trap in it in any way, shape or form. If he does not understand, I am sure he will let me know.

MR. COLTON: I object on the further ground that the particular part of the record to which Mr. Kellogg refers should be called to the attention of the witness, and the question read to him, together with the answers.

By MR. KELLOGG:

Q. You do not feel that I am trying to trap you in any such question as that, do you, Mr. Nelson? Because that is not my intention.

A. You mean in regard to the rates of royalties?

Q. Yes; in 1904, 1905, 1906 and 1907.

A. In 1904, 1905, 1906 and 1907 there had been an advance in the rates of royalties prevailing over those which prevailed in 1900, 1901 and 1902.

Q. You said something yesterday about forty-five cents, if I understood you correctly?

A. Yes; there were leases made about that time at forty and forty-five cents.

Q. There were leases?

A. Yes.

Q. What leases did you have in mind as having been made at those figures, at or about this time?

A. I had the Wyman lease in mind, at that time, at forty cents.

Q. That was your own lease, was it?

A. Yes.

Q. And that was the property which you tried for quite a while to sell, and which you offered to everybody, I think you said?

A. Pretty much.

Q. Which you offered to pretty much everybody, and finally found that there was no market for it and dropped the lease?

A. Yes.

Q. Rather than try to dispose of it further?

A. Yes.

Q. And that was done for the reasons that you gave yesterday, among which were the fact that it was an underground proposition, an unfavorable site, if I understood you?

A. Yes, sir.

Q. What year was that Wyman lease made?

A. I think I took that out in 1906.

Q. Will you state, please, what other leases you had in mind at the time you spoke of forty and forty-five cents as a royalty?

A. The Morton lease.

Q. What were the facts concerning that lease—the substantial facts, the date and so forth?

A. That was taken over by Mr. Carlson and Mr. Crosby, from the Niagara Iron Company.

Q. At what time?

A. They took that over in 1905 or 1906.

Q. Do you think you could be more specific as to the date? Which of those two years was it, according to your best recollection?

A. 1905.

Q. And the royalty there was how much?

A. Twenty-five cents a ton.

Q. Plus any underlying royalty?

A. No. They paid us a certain bonus.

Q. Twenty-five cents a ton with a bonus of how much?

A. $15,000 or $20,000 in cash, according to my recollection.

Q. The tonnage was how much, about?

A. They developed a large tonnage there.

Q. How much was known or developed at the time they took it over, if you know?

A. Well, there was just a fair tonnage, and they explored it further and developed a larger tonnage.

Q. At the time they took it over what you call a fair tonnage had been developed?

A. Yes.

Q. Meaning approximately how many tons?

A. It was just enough to show that there was a chance for a good ore body.

Q. Just enough to show a chance for a good ore body?

A. Yes.

Q. The mine was not opened at all at the time they took it over?

A. No, it was just raw land, slightly explored.

Q. What kind of ore was it known to be at the time they took it over?

A. A very good grade of ore.

Q. Located where?

A. In the Hibbing District, close to the Mahoning.

Q. Was any subsequent transfer or disposition of that lease made afterwards, after these people took it over?

A. After exploring it and developing it for several years they re-leased it.

Q. What year did they re-lease it in?

A. In 1907.

Q. They re-leased it in 1907 to what interest?

A. To Tod-Stambaugh.

Q. What royalty did they receive on that re-lease? I suppose you mean a sub-lease?

A. Yes. By the way, that was a state lease.

Q. Minnesota State lands?

A. Yes.

Q. What royalty did they reserve on this sub-lease to Tod-Stambaugh Company?

A. Thirty-five cents a ton.

Q. That is plus twenty-five?

A. Yes.

Q. Making a total of sixty cents a ton?

A. Yes.

Q. And that was in what part of the year 1907? I think I can give you that date, if I am not mistaken.

MR. COLTON: From what are you going to give him that date?

MR. KELLOGG: From the records compiled for me.

MR. COLTON: I object to that as not the best evidence.

By MR. KELLOGG:

Q. My figures as to that lease are that that was made in July, July 1, 1907, to Tod-Stambaugh. Does that correspond with your recollection?

A. That is about right.

Q. According to the information given me, the ore covered by this lease contained a metallic content of about 59 to 60 per cent. Does that correspond with your recollection?

A. I think that would be conservative, that is a very good ore body.

Q. What other leases did you have in mind when you spoke of forty or forty-five cents yesterday?

A. The Letonia.

Q. Something similar to Letonia?

A. Yes.

Q. What was the date of that lease?

A. I think that was about 1904; it might have been a little earlier.

Q. It might have been back in 1903?

A. I guess that is a little earlier. I know they were stripping in 1904.

Q. Will you mention any other lease?

A. I think that was a thirty-nine cent lease.

Q. Is there any other lease that you had in mind as being made within the period of 1903, 1904, 1905, 1906 and 1907, as bearing upon this forty cent rate, in point?

A. I do not just remember the terms of those leases out there in Coleraine, but they were made about that time.

Q. Are you referring to the washing proposition that you spoke of yesterday?

A. Yes, a number of properties leased out there at that time, taken up by the Steel Corporation.

Q. What general description would you give to those properties? In other words, how would you refer to those leases?

A. There are so many different parties interested there; take the Holman property, that was taken over.

Q. What year was that taken over?

A. That was about 1904.

Q. Are you quite sure it was 1904?

A. Yes.

Q. What else?

A. Well, the Lewis property; outside of my interest, was taken over at that time.

Q. Taken over by the Steel Corporation?

A. Yes.

Q. What date?

A. 1904; I think that was thirty-five cents.

Q. What else?

A. Well, the Canisteo.

Q. That was taken by the Steel Corporation in what year?

A. Either 1903 or 1904. I think they exercised the option in 1904.

Q. But is it not a fact that the option contract was made before 1904?

A. I think so.

Q. What other properties have you in mind?

A. Governor Lund's property was taken over.

Q. In what year?

A. About that same time; 1904 or probably 1905.

Q. Are not those properties that you have spoken of as the Coleraine group all together there?

A. No, the Governor's property is on La Prairie.

Q. Before coming to Governor Lund's property, let me ask you whether the properties you have enumerated are the Coleraine group, that is the Holman, Lewis and Canisteo.

A. Yes.

Q. Those are the principal ones of that group?

A. Yes.

Q. And the dates are as you have stated?

A. Yes.

Q. And Governor Lund's property, when was that taken over?

A. Either 1904 or 1905.

Q. That was situated in what district?

A. La Prairie.

Q. What other properties have you in mind?

A. I do not remember the date the Brunt was taken over.

Q. Is that a Steel Company lease?

A. No, sir. That is M. A. Hanna & Company, over in the Mountain Iron district.

Q. And approximately what date was that, to the best of your recollection?

A. 1904 or 1905.

Q. Can you give us anything later than that? All these dates that you have been referring to—the latest you have mentioned are these two properties,—are 1904 or 1905?

A. Yes.

Q. Do you recall any subsequent ones? If so, what are they?

A. At about what time?

Q. 1907, we will say.

A. The Morton was taken over in 1907 by the Tod-Stambaugh people.

Q. Yes; but we have already alluded to that. I am speaking, now, of other leases that you have not yet mentioned.

A. The Virginia.

Q. What was the date of that?

A. I think that was about 1910.

Q. What are the facts as to the Virginia? Who were the lessors and who were the lessees?

A. Mr. Alworth is the fee owner.

Q. Yes.

A. And the Virginia Mining Company, Mr. Cole, Mr. Hyman and associates are the lessees—Joe Cotton.

Q. And the rate of the royalty there was what?

A. I think they paid $1.35.

Q. I have that on my list. That contained approximately an estimated amount of 2,000,000 tons of ore, did it not?

A. Yes. It is not large.

Q. And the metallic content, as stated to me was supposed to run between 55.90 and 57.10 per cent?

A. Yes.

MR. COLTON: May I enter an objection? You are in no case stating these as matters of fact?

MR. KELLOGG: Yes; I am. I got them from the very best sources, and these are reported to me as authentic, and the witness is concurring.

MR. COLTON: Counsel cannot testify.

MR. KELLOGG: The witness can, and he is concurring in everything I say.

MR. COLTON: I enter the objection. Proceed.

By MR. KELLOGG:

Q. The lessees there were connected with Pickands Mather, were they not?

A. I think they made some arrangements with them. They are handling the ore.

Q. The date of that is given to me as June 10, 1909. Is that far wrong, do you think?

A. You have the record there. That is better than my recollection.

Q. I have what purports to be record. Does that coincide with your recollection?

A. I thought it was later. I thought possibly it was 1910.

Q. It was somewhere in 1909 or 1910. That is close enough for my purposes.

A. Yes.

Q. And there was a minimum of 100,000 tons per year required, was there not?

A. I did not know as to that. I knew what they were paying,—$1.35 royalty, was it not?

Q. Precisely. That was a proposition which was supposed to contain, at the time that it was made, about half Bessemer and half non-Bessemer, according to this statement. Does that accord with your recollection?

A. I did not know as to that, but I presume it was good ore or they would not pay that much for it.

Q. At any rate, you know it was supposed to be part Bessemer and part non-Bessemer and not all of either class, do you not?

A. Yes.

Q. What other leases did you have in mind, made at any time after, we will say, January 1, 1907—not to take up time with contracts made before that date?

MR. COLTON: Have you offered in evidence anything about the date the lease was originally made? What date are you assuming for the lease?

MR. KELLOGG: I am assuming nothing. I am asking Mr. Nelson, and he gave his recollection.

By MR. KELLOGG:

Q. To make it beyond any question, have you in mind any other date as of which that lease was negotiated other than the figure which you first said, 1910, or, as I suggested afterwards, perhaps the middle of 1909? Did any other years come into it at all as far as your recollection goes?

A. For that particular lease?

Q. Yes.

A. No, sir.

MR. KELLOGG: Is that the point you wanted to cover, Mr. Colton?

MR. COLTON: Yes. That was subsequent to the Hill lease, was it?

MR. KELLOGG: Oh, yes, surely. I have given the date. Mr. Nelson said 1910, at first, and then I suggested that it might be 1909. He is not quite sure.

By MR. KELLOGG:

Q. Leaving that lease, I will repeat the other question, as to whether you recall any other leases made after January 1, 1907?

A. The Madeira.

Q. What was the date of that, if you recall?

A. That is quite recent. I would not be surprised if that was in 1911 or 1910.

Q. It says here in this statement I have, and I will ask you if this corresponds with your recollection, that it was made on the 10th day of December, 1909. That refers to the Madeira.

A. That is Billy Coates'.

Q. Yes; made to Coates by Whiteside Chisholm. That is probably the same lease, I should fancy.

A. Yes; that is the one.

Q. You would not be prepared to say that the date I have just given you was certainly inaccurate, would you, at the moment?

A. Oh, no.

Q. The rental on that was how much?

A. My recollection is that they paid $1.35.

Q. That was supposed to contain 59.50 metallic content, according to this statement. Is that substantially correct, in your opinion?

A. It was very good ore, yes.

Q. You would call that good ore,—59.50 metallic content?

A. Yes.

MR. COLTON: Have you asked him as to any of these things, as to how the various properties compared with the ore in the Hill lease?

MR. KELLOGG: I am getting on beautifully, Mr. Colton, and so is he. You shall make all comparisons, of every nature your ingenuity can suggest. I promise you ample opportunity.

MR. COLTON: Will you let me have that record or statement which you have before you?

MR. KELLOGG: Certainly. With pleasure. It is a statement from the official records, and you are entirely welcome to it.

By MR. KELLOGG:

Q. That property is stated in this memorandum to have been, as to 70 or 80 per cent of it, an underground mining proposition, with about 20 to 30 per cent a stripping proposition. Does that correspond with your recollection of that property?

A. I did not know they had any stripping there at all.

Q. You thought it was all underground?

A. Yes.

Q. Underground mining is, of course, nearly twice as expensive as a good stripping proposition, is it not?

A. Yes. That was particularly good ore, though.

Q. That was particularly good ore?

A. Very good ore.

Q. There was a low percentage of phosphorus in that ore, as a rule, was there not?

A. Yes; it was Bessemer ore.

Q. Now, what other leases after January 1st, 1907?

A. Coates leased a little mine over near Chisholm. I cannot remember the name of it.

Q. Was it the Euclid?

A. Yes.

Q. That was a small ore body, about 250,000 tons?

A. Yes.

Q. The royalty was about 60 cents?

A. Yes.

Q. That is stated here to be non-Bessemer ore.

A. Yes, but it was an open pit.

Q. It says here, or let me suggest—

MR. COLTON: I object to quoting from records, contrary to the witness' recollection.

MR. KELLOGG: I am going to ask him about his recollection in every case. I know he knows a good deal about this statement.

By MR. KELLOGG:

Q. I am going to ask you whether your recollection corresponds at all with this memorandum given me; that is, that the Euclid mine was a combined shaft and milling operation.

A. That is right.

Q. That method of operation is more expensive than mere stripping and less expensive than straight underground mining, isn't it?

A. Yes.

Q. That is somewhere in between the two costs?

A. Somewhere in between.

Q. That date was November 6th, 1908, if this memorandum is correct. Does that correspond with your recollection?

A. Just about that.

Q. Now will you kindly proceed with any other leases that are in your mind?

A. There was another lease made, but I do not remember the terms, I am not familiar with that. There was a lease made by Young Allworth and associates to the Inland Steel Company of the Grace mines.

Q. That appears to be dated April 1st, 1910, two years ago.

A. Yes.

Q. Grace Mining Company to Inland Steel Company?

A. That is it.

Q. And at a rental of 65 cents royalty?

A. That is my recollection.

Q. I am only asking you these things so far as your recollection goes, and if my statements are inaccurate you will always correct me. That covered 700,000 estimated tonnage, according to this memorandum?

A. I don't know anything about that.

Q. This memorandum says that it was non-Bessemer ore.

A. I understood from the Superintendent that that was a very desirable ore for mixing with other ore from the Laura mine.

Q. But it was not Bessemer ore by itself?

A. No, sir.

Q. It contained some sulphur?

A. Yes.

Q. Two per cent of sulphur?

A. Yes.

Q. Of irregular quality, according to your recollection, not uniform quality.

A. I know there was not anybody else wanted it but the Inland people.

Q. Nobody else wanted it but the Inland people?

A. Yes, they seemed to have special use for that grade of ore.

Q. This memorandum also says that it was expensive mining; "Mng.", I think, means mining.

A. Yes.

MR. COLTON: Will you give me the date?

MR. KELLOGG: April 1st, 1910.

THE WITNESS: (Continuing). That I think would be fairly expensive; it would be underground mining.

By MR. KELLOGG:

Q. What next. Suppose I make the question a little more specific. Do you recall any leases in 1906? Let us say toward the end of the year 1906, getting it down to as limited a period as possible.

A. No, I do not just recall any now.

Q. Suppose I ask you about certain specific leases and see if you know anything about them. I will go back to 1905 first. Do you recall the Bennett & Longyear lease to the Wallace Company, contracting company, I think it must be from the abbreviation, covering what is known as the Alexander property?

A. Yes.

Q. That is stated to be—

MR. COLTON: I object to your stating the rental without asking the witness what the rental was.

MR. KELLOGG: I am asking him first as to the date.

By MR. KELLOGG:

Q. This is stated as being April 1st, 1905. Does that correspond with your recollection?

A. I know it was back there some time.

Q. You recall the rental?

A. They paid a high royalty, but I do not remember the figures.

Q. It is stated here at 75 cents; is that substantially correct?

A. Yes.

Q. That was a small body of ore?

MR. COLTON: I object to that statement "it says here 75 cents" as improper.

By Mr. Kellogg:

Q. To avoid that objection I will ask the witness if that is his recollection, that it was approximately 75 cents a ton?

A. That is my recollection.

Q. Is it your recollection that it was a body of ore of about 250,000 tons?

A. I did not know anything about the tonnage. I know there was a small tonnage there, but it was very cheap mining. This was adjoining the Forest mine that was already opened up.

Q. It was a stripping mine?

A. A stripping mine, and all they had to do was to go in and remove the little over-burden and take the ore. It was a very ideal proposition.

Q. It was a favorable location in every way?

A. Yes.

Q. In 1906, do you remember a lease made by the Hartley interests and others to the New York State Steel Company, on or about November 1st, 1906, known as the Knox mine?

A. Knox?

Q. It is so marked here, but perhaps that is a mistake.

Mr. Colton: May I make the same objection to all references to that record?

Mr. Kellogg: Certainly.

The Witness: What was the description?

By Mr. Kellogg:

Q. Of the ore itself?

A. No, the mine.

Q. Good grade non-Bessemer ore, stripping mine.

A. No, I mean the description of the forties, the location.

Q. The southwest quarter of the southwest quarter of Section 19, Township 59, Range 14.

A. No, I don't know about that.

Q. Do you know of a lease made by Hartley and others to the Republic Iron & Steel Company on the same date, called the Onondaga?

Mr. Colton: He did not know anything about the other lease.

MR. KELLOGG: I stated that, and he says he does not remember the date, and I do not care to ask him anything further.

MR. COLTON: But you say the same date as something that he does not remember.

(The question was repeated by the stenographer.)

By MR. KELLOGG:

Q. Scratch out the date, and make it on or about November 1st, 1906, of property called the Onondaga, being the westerly 25 acres of the north half of the southwest quarter of Section 4, Township 58, Range 17.

A. Called the Onondaga?

Q. It is called the Onondaga mine in this memorandum I have, and I have given you the exact location as stated in this memorandum of it.

A. No, sir, I do not know about that.

Q. Do you remember a lease made January 1st, 1907, by the Hartley interests to the Oliver Mining Company, made to the Lorain Iron Mining Company, the stock of which was largely owned by the Oliver Mining Company? That is the northwest quarter of the southwest quarter, and the southwest quarter of the southwest quarter of Section 21, Township 59, Range 14.

A. No, I am not so well posted there in that Eveleth district.

Q. Do you remember an instance in which the Oliver people had a lease from the Fowler estate and the Flynns, on some property in the Eveleth district, that lease having seven years approximately to run, and a royalty of only thirty-five cents a ton, and where, back in 1905, they voluntarily cancelled that lease and took a new one for fifty years at a royalty of sixty-five cents a ton?

MR. COLTON: Would you, for my information, before he answers, mind asking him where the Eveleth district is?

MR. KELLOGG: Certainly I will, with pleasure.

By MR. KELLOGG:

Q. Will you please tell us where the Eveleth district is located, Mr. Nelson?

A. That is the Eastern Mesabi.

(By request, the stenographer repeated the preceding question, as follows:)

"Q. Do you remember an instance in which the Oliver people had a lease from the Fowler estate and the Flynns, on some property in the Eveleth district, that lease having seven years approximately to run, and a royalty of only thirty-five cents a ton, and where, back in 1905, they voluntarily cancelled that lease and took a new one for fifty years at a royalty of sixty-five cents a ton?"

THE WITNESS: I did not know about that.

By MR. KELLOGG:

Q. Mr. Colton asks me to inquire whether the Eveleth district is in the extreme east.

MR. COLTON: If he does not know, I do not care.

MR. KELLOGG: I thought you were speaking about the district itself.

MR. COLTON: I only wanted to know about the district in case I was going to have any testimony about it.

MR. KELLOGG: I will leave that to you.

By MR. KELLOGG:

Q. In order to shorten this examination, Mr. Nelson, I will ask you the general question whether you, at the moment, recall any other leases of any importance made after January 1, 1907 covering property in any part of the Mesabi Range, other than those that we have been specifying.

A. There is the Kellogg lease.

Q. I ought to know about that, and I think I do. Will you state the facts as to the Kellogg lease, as you recall them?

A. My recollection is that the New York State Steel Company pays $1.25 a ton royalty on that.

Q. And the date of that was what?

A. Well, it is after 1907, I believe.

Q. My memorandum says, and I will ask you if this suggests anything to you, that it was dated October 22, 1906?

A. As far back as that?

Q. That is the memorandum I have here. I will ask you whether you would be prepared to say that that date was substantially incorrect.

A. No, sir; I would not.

Q. You would not?

A. No, sir.

Q. The Kellogg mine contained approximately how much tonnage?

A. Several million tons of very good ore.

Q. 3,200,000 would you say, approximately?

A. Yes.

Q. And 66.10 metallic content, approximately?

A. Well, I understood it went better than that.

Q. Better than that?

A. Yes, sir.

Q. It was a Bessemer ore, was it not?

A. Yes.

Q. But it was an underground mine, was it not?

A. Yes.

Q. As I am informed, there was no stripping proposition involved in any part of that lease. Is that correct?

A. Yes; that is my understanding; but it was very desirable ore.

Q. Almost entirely Bessemer ore, I think, was it not?

A. Yes.

Q. Was there any other lease that you remember?

A. You are not interested in any leases outside of the Mesabi Range, I suppose?

Q. No; I do not think the inquiry here could properly go outside of that range, at the moment. At any rate, I shall not ask you for anything except leases in the Mesabi Range.

A. I do not remember any now.

MR. KELLOGG: That is all.

RE-DIRECT EXAMINATION.

By MR. COLTON:

Q. Mr. Nelson, do you know Chester A. Congdon?

A. I have met the gentleman, yes, sir.

Q. Do you know whether or not he has ever been employed by the United States Steel Corporation?

A. I did not know that he was employed by the Steel Corporation, but I have always known that he was very close to them.

Q. Do you know whether or not he has been instrumental in obtaining purchases of ores for them from time to time, and for the Carnegie interests from time to time?

A. In the early days he was very close to Mr. Oliver, and represented Mr. Oliver up there.

MR. COLTON: The Government produces a document entitled "Brief against the Tonnage Tax Bill, submitted to the Committee on Taxes and Tax Laws of the House of Representatives of the Minnesota Legislature, session of 1909, by delegation from St. Louis County in the House of Representatives," said document being signed "Respectfully submitted, the St. Louis Delegation in the House of Representatives, by Chester A. Congdon, Chairman, Richard F. Grant, secretary, February 17, 1909," and gives notice that it will rely upon the following passages in said document.

MR. REED: How will you rely on them, Mr. Colton? By offering them in evidence?

MR. COLTON: Yes.

MR. REED: Do you offer them in evidence?

MR. COLTON: Yes. We will offer in evidence and rely on the following pages in said documents.

MR. REED: You mean you do offer them in evidence now?

MR. COLTON: Yes, we do offer them in evidence.

MR. KELLOGG: Is your offer complete, so that we may note objections now?

MR. COLTON: No, I am not through.

MR. KELLOGG: I think we ought to note our objections before you offer the substance of what you intend to read.

MR. COLTON: You might want to object to the form of the offer, and you can not very well object to that before you know what the offer is.

MR. KELLOGG: I will note an objection to the effect that the record which counsel for the Government states he proposes to offer is, so far as the interests of our clients are concerned, immaterial, irrelevant and incompetent.

MR. REED: We object to it for the reason that it is hearsay, and not proven to have been made by any authorized agent of the Steel Corporation, or on behalf of the Steel Corporation or any of its subsidiary companies, and we object to it further

for the reason that the authenticity of the document now produced is not proven.

MR. KELLOGG; In that last objection we also concur.

MR. COLTON: From page 21, beginning with the words "99.3 per cent of the known iron tonnage in Minnesota is on the Mesabi Range. The balance is, therefore, a negligible quantity," through the words on page 24: "every dollar of tax they should pay."

Also from page 33 the following:

"Excepting the Great Northern lease, which was not an ore deal, but an operation in high finance, the Oliver Company has never paid a royalty as high as seventy-six cents. The royalty of only two leases of the Oliver Company exceeds fifty cents, which is the equivalent of a present value of 15.76 cents per ton of ore in place, assuming that the leases run for fifty years, as most of them do, and that money is worth six per cent."

MR. REED: I will just note on the record that we will make one objection to all of these extracts when Mr. Colton has finished his offer.

MR. KELLOGG: I ask that the same be noted as to our interests.

MR. COLTON: (Continuing reading:)

"It will be noted that the royalty equivalents of the valuations of the three highest grades of ore is higher than any royalty paid by the Oliver Company, always excepting the Great Northern lease. It will be noted that the royalty equivalents of five of the nine different valuations is higher than the royalty paid by the Oliver Company on any of its leases except two. We do not give royalties of the independent owners, as they only own about one-quarter of the tonnage. The Mahoning is by far the largest mine in that class, and its royalty is fifteen cents. The average royalty per ton paid by the Oliver Company on ore shipped from the Mesaba Range during the years 1902 to 1908, both inclusive, (these are the years of the existence of the United States Steel Corporation) was 27.2476 cents."

Also beginning with page 28, "Mining leases," up to and

including the words on page 33 "be taxed at the same rate," and beginning at the bottom of page 33 with the words "present value of," through the bottom of page 34. We produce the book for the court's use, and these extracts we shall ask to have copied into the record in the book of exhibits.

MR. REED: We object to the whole offer as incompetent, being hearsay. We object to it as being an ex parte utterance of persons not shown to be connected in any way with the Steel Corporation or any of its subsidiary companies, and persons who are not shown to be agents of any kind with any authority to act for the Steel Corporation or any of its subsidiary companies. We object to it further because the authenticity of the paper now offered in evidence is not proven, and we object to the offer further because the whole paper is not offered in evidence, but only extracts from various parts.

MR. KELLOGG: On behalf of the clients whom I represent, I object to the paper on the ground that it is not properly authenticated, on the ground that it does not purport in any way to be a declaration or statement made by anybody who has power to bind us in any way, shape or form, and that the entire testimony that is offered, and each and every part thereof, is incompetent, irrelevant and immaterial as against our interests.

MR. COLTON: For the Government I will say that there have been introduced in evidence certain matters showing agency by Chester A. Congdon of the United States Steel Corporation and its interests, and that the Government intends to introduce further evidence as to the identity of the particular publication, if that is insisted upon, that this is not a correct copy of the document in question.

MR. KELLOGG: To make this more plain, I will ask Mr. Colton if he cares to answer, whether he claims that the person or any persons to whom these utterances are due was in any way connected with or had power to represent any of the clients whom we represent.

MR. COLTON: I have no information to that effect at this time.

MR. REED: I suggest that that be printed in the book of special government exhibits. I am told you are having some special exhibits printed, not with the regular exhibits.

MR. COLTON: In reference to a few contracts, yes.

MR. REED: Can that be done?

MR. COLTON: Just these excerpts from it?

MR. REED: Whatever you want to print out of that.

MR. COLTON: If it will not subject us to any stipulation, I am willing it should be printed in that book.

MR. REED: I do not ask any stipulation as to this.

MR. COLTON: Very well; I have no objection.

MR. REED: But I now give notice that we shall insist on every part of our objection to this offer, and that we will move the court to strike this paper and the parts that have been offered in evidence from the record.

MR. KELLOGG: In that we concur.

(The pamphlet referred to was thereupon marked Special Exhibit No. 2, January 29, 1913, and will be found in Volume II of Special Exhibits).

By MR. COLTON:

Q. Do you know Richard F. Grant?

A. Yes, sir.

Q. What is his occupation?

A. Grant is now with M. A. Hanna Company of Cleveland.

MR. COLTON: I will call on the Corporation to produce the documents or other papers furnished to this committee, directly or indirectly, by the United States Steel Corporation or its subsidiary companies, relating to the average rate of royalty paid by the Oliver Company on ores shipped from the Mesabi Range during the years 1902 to 1908, both inclusive.

By MR. COLTON:

Q. In an examination by Mr. Reed, which in my opinion was new matter concerning which I shall exercise the right of cross examination, Mr. Nelson, you were asked concerning the development or attempted development of washable ores at Coleraine some time prior to the time that the United States Steel Corporation began such experiments. Will you give me as fully as you can the parties concerned in that experiment?

A. Walter Barrows was one of the party, and a young man who shortly afterward left that part of the country and went down to Arizona, and I can not recall his name.

Q. Not to prolong the examination, do you know with what company or companies either of those individuals was connected at the time?

A. I understood they were doing it on their own responsibility.

Q. Do you know what their business was?

A. Well, Mr. Barrows is a mining man and a furnace man, and this other young man at one time was private secretary to the president of the Minnesota Iron Company, John Bacon.

Q. How long before that had he been connected directly or indirectly with the Minnesota Iron Company?

A. Some time before that.

Q. I understood you to say that they were from Tennessee.

A. No; they brought up a small washing plant, a portable log washing plant, from Tennessee.

Q. Was that method of concentration known in Tennessee prior to that time?

Mr. Reed: If you know. I object to the question because the witness has not been shown to have any knowledge of concentration methods in Tennessee.

By Mr. Colton:

Q. You may answer.

A. The principles are pretty much the same, but improvements have been made upon the Tennessee process.

Q. Now, do you know anything as to the extent of the property which these gentlemen were exploring in connection with an attempt to develop an experimental concentrating plant?

A. My recollection is that the property had already been explored and there was a shaft down into the ore, and the work that they did was to experiment with the concentrating of the ore. My recollection is that they had the Buckeye property under option, and after demonstrating the feasibility of concentrating the ore, they expected to dispose of the property.

Q. Was the Buckeye property near Coleraine?

A. It is right near where Coleraine is right now. There was no Coleraine at that time.

Q. Now, these independents who did not, as you stated, succeed in making a commercial success of the enterprise, did, I believe you said, make a success of the concentration process.

A. They demonstrated that it was feasible to concentrate that ore.

Q. Do you know why they could not interest the capitalists, then, in the concentration of this ore after they had made a successful experiment in respect to the fact that it could be concentrated?

A. Well, I have always understood that they had a short-time option on the ore properties, and their option expired, and they would have to start in paying royalty shortly, and they were not financially strong enough to carry the proposition through.

Q. Does the expense of concentrating this ore make it amount to what is equivalent to a low grade ore; I mean equivalent in point of cost, when you arrive at it?

MR. REED: I object to that as leading.

MR. COLTON: This is cross examination.

(The pending question was repeated by the stenographer.)

MR. REED: I object to it, then, as cross examination. Counsel have no right to cross examine their witness on that subject.

MR. COLTON: I withdraw the statement that it is cross examination, and I will let Mr. Reed's objection stand as it was.

MR. REED: I object to your withdrawing that unless you withdraw the question.

MR. COLTON: I ask to have stricken from the record my statement. I will withdraw the question and ask to have stricken from the record the question and all subsequent questions and objections. I will now ask to have my question read.

(The question was again read by the stenographer.)

By Mr. Colton:

Q. State whether or not this ore, taking into account the expense of concentration, was at that time commercially available to independents not owning transportation facilities.

A. Is that all one question?

Q. Yes.

Mr. Reed: I object to the form of the question, because the witness has already testified on cross examination that the ore at that time was not commercially available to any person under any circumstances.

The Witness: They did not consider it available.

By Mr. Colton:

Q. How would a net profit of 35 cents per ton upon the transportation of ore of this character from its location to a lake port have affected the commercial availability of said ore?

Mr. Reed: That is objected to, first, because it appears by the evidence that the ore was not transported to the lake ports until after it had been concentrated and, in the second place, because it does not appear in the evidence that there was a net profit of 35 cents a ton on the transportation.

Mr. Colton: I did not say the transportation of the ore before concentration.

Mr. Kellogg: Is not all this covered in the direct examination?

The Witness: I think 35 cents a ton would more than offset any extra expense in concentrating the ore.

By Mr. Colton:

Q. Then state whether or not the inability of the persons that originally carried on this successful experiment so far as concentration is concerned, was affected in any way by the fact that they did not enjoy the same transportation facilities as are enjoyed by the United States Steel Corporation, assuming that the United States Steel Corporation has a net profit on the transportation of its ore from this district to the lake port of 35 cents a ton.

Mr. Reed: That is objected to first because there is no

evidence that the United States Steel Corporation or its subsidiaries have a net profit of 35 cents a ton; second, because there is no evidence that such net profit is excessive or unreasonable; third, we object to the question as speculative; fourth, that the evidence shows that what is transported to the lake is the concentrates, and not the natural ore.

MR. COLTON: As to the objection that there is no evidence that the Steel Corporation has a net profit of 35 cents on ores similarly situated, I will refer to the documents already introduced in evidence.

(By request of the witness, the stenographer repeated the pending question as follows:)

"Q. Then state whether or not the inability of the persons that originally carried on this successful experiment so far as concentration is concerned, was affected in any way by the fact that they did not enjoy the same transportation facilities as are enjoyed by the United States Steel Corporation, assuming that the United States Steel Corporation has a net profit on the transportation of its ore from this district to the lake port of 35 cents a ton."

THE WITNESS: Yes; I believe it was.

By MR. COLTON:

Q. On cross examination, Mr. Nelson, you stated that after the formation of the United States Steel Corporation there was a lull in the ore business for a time. What do you mean by "a lull in the ore business"?

A. My recollection is that there was a sort of a depression on ore for a time, shortly after the Steel Corporation was organized. We did not know just how things were going to—

MR. REED: You have answered what you mean by a lull.

MR. COLTON: Now go on, Mr. Nelson, and explain fully. I thought you were going on.

MR. REED: He was going on, and I stopped him, because what he was going on to say was not responsive to your question.

(By request, the stenographer repeated the last question and the unfinished answer thereto.)

THE WITNESS: What I intended to say was that we did not

know just how the ore situation was going to be affected by the organization of this big corporation, and explorers were not active for a time.

MR. REED: We move to strike that out as not responsive to the question, and we further object to it as hearsay and as incompetent.

By MR. COLTON:

Q. How long did that depression of which you speak in the ore business continue?

A. It was not to exceed a year anyway.

Q. Do you know whether the United States Steel Corporation for some time after it was formed, sold ore to various parties, including Jones & Laughlin and Cambria?

A. No, sir; I did not.

MR. REED: You say you do not.

THE WITNESS: Yes.

By MR. COLTON:

Q. You have no information on the subject one way or the other?

A. No, sir.

Q. On a certain new matter relating to the Cuyuna range you were asked various questions by Mr. Reed in respect to the estimated tonnage. I gave notice at the time that this was a new subject. I now intend to exercise my right to cross examine in respect to all estimates or attempted estimates made by Mr. Nelson in respect to this region.

After some questions, you were asked the following:

"Q. Which figure?

"A. 150,000,000. I think that would be a very liberal estimate of the tonnage shown up now.

"Q. But you do not undertake the prophesy the tonnage that will be shown up by further development work, of course?

"A. I want to say in that connection that I had a talk with Mr. Rukard Hurd.

"MR. COLTON: I object to any hearsay as to what talk he had with Mr. Rukard Hurd.

"MR. LINDABURY: You had a talk on the subject?

"THE WITNESS: Yes, with the Tax Commissioner, and he

said it was very difficult to make any estimate on that range up there.

"MR. COLTON: I withdraw my objection."

By MR. COLTON:

Q. State whether or not this 150,000,000 tons figure is a mere guess on your part.

MR. REED: Objected to as leading.

THE WITNESS: It would be more or less of a guess. I know of tonnages in different properties and so on, and then I hear other people guessing and so on.

By MR. COLTON:

Q. This is a collection of guesses, then,—this figure of 150,000,000?

A. It is kind of in that line. I never sat down and figured out what each property contained. I do not believe there has been anything official gotten out on that range yet. I do not know of anything. The Tax Commission has not gotten out any estimates yet.

Q. Did the Corporation at one time have extensive options over the Cuyuna range?

MR. REED: Objected to as leading.

MR. COLTON: Strike that out.

By MR. COLTON:

Q. State whether or not the United States Steel Corporation or any of its allied interests had options covering parts of the Cuyuna range.

MR. REED: If you know.

THE WITNESS: In the early development of the Cuyuna range they had some options in there. They were doing some work.

By MR. COLTON:

Q. Would you undertake to say, Mr. Nelson, that the United States Steel Corporation now does not have, indirectly, extensive ownership in the Cuyuna range?

MR. REED: That is objected to as leading, as calling for speculation, and as not proper re-direct examination.

THE WITNESS: I do not know of any holdings, direct or indirect.

By MR. COLTON:

Q. You do not know anything about it, one way or the other?

MR. REED: That is objected to as not proper re-direct examination.

THE WITNESS: No, sir.

MR. COLTON: You asked him about ownerships in there.

MR. REED: So did you, on direct examination?

MR. COLTON: Not in the Cuyuna range. I did not touch any range except the Mesabi. I confined my examination strictly to the Mesabi, I think.

By MR. COLTON:

Q. Occasionally, Mr. Nelson, ore is acquired by large companies without disclosing the large company's name at the time of the acquisition, is it not?

MR. REED: That is objected to as vague, speculative and incompetent.

THE WITNESS: I suppose that could be done.

By MR. COLTON:

Q. Have you known of instances where companies have acquired ore without disclosing their identity?

MR. REED: That is objected to as irrelevant, immaterial and incompetent.

THE WITNESSS Oh, yes; back in the early days they used to do that.

MR. REED: Are we to be judged by people's suspicions?

MR. COLTON: I have some evidence on that subject in the Carnegie minutes, Mr. Reed. Not in reference to this range.

MR. REED: Oh!

By MR. COLTON:

Q. You were also questioned by Mr. Reed, in the cross examination, concerning the question of whether the Steel Corporation did not simply maintain the transportation rates which it found in existence at the time of its formation; and I believe that you answered that it did?

A. Up to 1911.

Q. Did you give any date as to the time it changed its rate?

A. It was late in the fall.

Q. You do not know whether it was prior to or subsequent to October 26, 1911?

A. No, sir.

Q. Do you know whether the traffic over the ore-carrying roads of the United States Steel Corporation greatly increased between the time that it took over those roads and January 1, 1911?

A. There was a large increase of business right along.

Q. And despite this large increase in traffic, it made no reduction in rates up to January 1, 1911?

A. No, sir.

Q. Do you know as much about how the United States Steel Corporation has been carrying on mining operations in the Hill ore lands since the acquisition of said lands by the Hill ore lease as you do about the kind of transportation service furnished by the United States Steel Corporation over its transportation lines?

MR. REED: That is objected to as not proper re-direct examination, and as cross examination of the Government's own witness.

THE WITNESS: Well, I am traveling back and forth on the Missabe Road quite frequently, and meet people right along that are shipping, so I am quite familiar with the railroad; but I do not see much of the operation of the Hill ore lands, only just one mine, the Leonard mine. I go over there once in a while.

By MR. COLTON:

Q. Do you meet people on that railroad and talk with them about how the property is being mined by the United States Steel Corporation?

A. Well, yes; I have heard that discussed too.

Q. You do not know, except just as acquired as a matter of business, anything about whether the independents are delayed in respect to service on transportation lines of the Corporation, do you?

MR. REED: I object to that as leading and as cross examination of the Government's own witness.

THE WITNESS: Well, I never heard of anybody having any trouble in shipping.

By MR. COLTON:

Q. Your information is a matter of business hearsay?

A. Yes, sir.

Q. And your information in regard to the way the United States Steel Corporation is operating the Hill ore lands is a matter of business hearsay?

A. A good deal.

Q. State in your own way the manner in which they are operating and mining these ore lands, to the best of your knowledge.

A. My impression is that they are making every effort to get out every ton of ore that they possibly can. That is the impression I have.

Q. Do you know whether they are taking the low grade ore in preference to the good grade ore?

A. No. Naturally they would take the best ore.

Q. Do you know whether they are mining and operating their mines in such a way as to increase or diminish the value of those ore lands, beyond the extent of the ore removed.

MR. REED: That is objected to as incompetent, and I object to the witness as incompetent.

MR. KELLOGG: We concur in that objection; also as irrelevant and immaterial.

THE WITNESS: Well, naturally they are going after the cream. That is what you should expect them to do, using good business judgment.

MR. KELLOGG: That is what they have the right to do, is it not?

THE WITNESS: Yes, that is the idea.

By MR. COLTON:

Q. Mr. Reed asked you a number of questions on the difficulty of disposing of the Wyman property and why you did not develop it. I would like you to go a little more in detail into your reasons for not developing that property.

MR. REED: Objected to as not proper re-direct examination.

THE WITNESS: I never expected to develop the property, I explored it to sell.

By MR. COLTON:

Q. As to the reasons that you were unable to dispose of it.

A. Well, it was not a high grade ore, and I could not get a customer to see where there was any money in it for him to take that property over at that time. I think—my opinion has always been that on account of our high freight rate up there in competition—

MR. REED: I object to that as not responsive.

By MR. COLTON:

Q. Continue.

A. (Continuing)—in competition with the Michigan mines; where they are underground mines, where they have lower freight rates running from twenty-five to forty cents, and naturally if a man had to buy an underground mine he is going to buy an underground mine where transportation costs are lower. Now, that is the proposition I was up against there.

(Whereupon a recess was taken until two o'clock.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

P. H. NELSON,

a witness produced on behalf of the United States, having been previously sworn, testified as follows:

RE-DIRECT EXAMINATION (Continued)

By MR. COLTON:

Q. After the amount of objection to the introduction of this Special Exhibit No. 2, I neglected to ask you a question

that I intended to ask you, and that was as to whether you know anything about the pamphlet entitled "Special Exhibit No. 2." I will ask you to examine this and state what, if anything, you know about it.

MR. KELLOGG: That is objected to on the ground that the witness' knowledge as to the contents of the document can not possibly be material.

MR. COLTON: As to the identity of the document, it might be.

MR. KELLOGG: You change the question, then?

MR. COLTON: No, I will let him answer that.

MR. KELLOGG: I object further on the ground that the document is itself inadmissible on each and every ground as stated in the objections set forth to previous questions.

MR. REED: We join in that objection.

THE WITNESS: I have seen copies of this pamphlet.

By MR. COLTON:

Q. Where did you see them?

A. In St. Paul, and also at home.

Q. At home where?

A. In Duluth.

Q. Where in St. Paul did you see copies of that pamphlet?

MR KELLOGG: Of course, the same objection to this line of testimony.

THE WITNESS: At the Capitol building.

By MR. COLTON:

Q. In the capitol building itself?

A. Yes.

Q. Was it on file there?

A. It was handed to me to go over.

Q. By whom was it handed to you?

MR. REED: You refer to this particular pamphlet or to one like it?

MR. COLTON: One like it.

THE WITNESS: My recollection is that the Senator from Brainard——

By Mr. Colton:

Q. Is that the name of a county?

A. No, it is the name of a town, or city. I do not recall his name now. He handed me a copy of it.

Q. Did you ever read that pamphlet?

A. Well, I went over it partly.

Q. State whether or not the rates of royalty fell or rose subsequent to the Hill ore lease.

A. Well, I think that after the Hill ore lease was made royalties were higher than they were previously.

Q. How do you account for that rise in royalty subsequent to the Hill ore lease?

Mr. Kellogg: That is objected to as calling for a conclusion and as calling for something that is not material or relevant to the issues here.

Mr. Reed: We object to it for the same reasons as those just stated by Mr. Kellogg, and also because it is speculative.

The Witness: Well, naturally, I suppose it was on account of there being fewer properties on the market.

By Mr. Colton:

Q. State whether or not a very large property was taken out of the market through the acquisition of the Hill ore lease by the United States Steel Corporation.

Mr. Kellogg: We will concede that.

The Witness: Well, I think there was.

By Mr. Colton:

Q. This morning you were questioned concerning the lease of Bennett and Longyear to Wallace Contracting Company, dated April 1, 1905, royalty of seventy-five cents, tonnage of 250,000 tons, Bessemer ore, Alexander mine, stripping, favorable mining. About how long would it take to market 250,000 tons of ore under favorable conditions?

A. Those were very favorable conditions. It was adjoining a mine that had already been stripped and worked out, and this was a continuation of the ore body into the Alexander from the Forest mine, and there was very little overburden there. It was just a steam shovel proposition.

Q. Does the fact that you can put it on the market in the course of a year or two tend to raise prices that you were willing to pay for a given mine?

A. Of course; naturally, if the ore is easily available it means that your mining costs are cheap.

Q. How about the length of time that it takes you to realize on the amount of ore you have got in the ground? Suppose you had 100,000,000 tons of ore in the ground, and you have 250,000 tons of ore in the ground, and let us assume that you get seventy-five cents royalty on each property. Is ore used rapidly enough in this country to use up that 100,000,000 tons of ore in a single year?

A. No, sir.

Q. In two years?

A. Well, if you were the only one in the mining business, two years would.

Q. Do you know of any mine that is so developed containing a body of ore of 100,000,000 tons that could be put on the market in a single year?

A. No, sir.

Q. In two years?

A. No, sir.

Q. In five years?

A. Well, there would be a group of mines. The Steel Corporation produced last year about 23,000,000 tons. That is from all their mines.

Q. But that is from a very much larger property than 100,000,000 tons?

A. That is from a group of properties in several states.

Q. Lease Hartley mine and others to New York State Steel Company, dated November 1, 1906; rate of royalty 75 cents; estimated tonnage 1,000,000 tons non-Bessemer ore, Knox mine. What kind of ore was that?

A. I do not remember anything about the Knox.

Q. There is no very material difference between 250,000 and 500,000, is there, Mr. Nelson, in respect to the length of time it takes to get the ore out, taking a given mine?

A. It depends on the mine a great deal. In an underground mine it would take some time to get 250,000 tons out.

In an open pit mine it would not take very long to take out half a million tons.

Q. I will ask you about how long it would take to take out the ore of this mine, as nearly as you can give it, if you know: Lease, Hartley mine, to Republic Iron & Steel Company, dated November 1, 1906, royalty 75 cents; estimated tonnage 500,000 tons Bessemer ore, Onondaga mine.

A. I don't know anything about that.

Q. You do not know anything about that mine at all?

A. No, sir.

Q. 1,000,000 tons is a rather small affair?

A. It is not a large mine at all.

Q. Lease of Hartley mine and others to Lorain Iron Mining Company, subsidiary of Oliver Mining Company, dated January 1, 1907, royalty 75 cents; estimated tonnage 1,500,000; good non-Bessemer ore, part stripping. Does 1,500,000 tons amount to much of anything compared with 100,000,000 tons?

MR. KELLOGG: We will concede that.

THE WITNESS: It is not considered a big mine at all.

By MR. COLTON:

Q. Lease of Hartley and other mines to the Lorain Iron Mining Company, dated January 1, 1907, royalty 75 cents, estimated tonnage 10,576,000; largely non-Bessemer; underground expensive mining. That is the statement that Mr. Kellogg read you. I take no responsibility for any statements contained in there.

A. Which mine was that?

Q. Lease of Hartley and others to the Lorain Iron Mining Company, dated Janaury 1, 1907, royalty 75 cents; estimated tonnage 10,576,000; largely non-Bessemer; underground expensive mining.

A. That must be the Hartley mine, is it not?

MR. KELLOGG: Yes.

THE WITNESS: That is stripped. That is an open pit mine.

By MR. COLTON:

Q. That is an open pit mine?

MR. KELLOGG: That is a Hartley mine. It says here: "Underground expensive mining."

MR. COLTON: This is the witness' recollection, now.

THE WITNESS: There is a mine there that is open pit.

MR. KELLOGG: He has a right to state his recollection.

By MR. COLTON:

Q. That means cheap mining?

A. Of course, Mr. Hartley owns a number of mines. There is one with his name attached to it. That is the Hartley mine. It is a good big mine, and it is open pit. It is between Buell and Chisholm.

MR. KELLOGG: I think it is fair to say there is nothing in my memorandum that names that particular mine; so that you cannot say it is the Hartley mine. It is a Hartley mine. That is all, I am sure, my memorandum shows.

By MR. COLTON:

Q. You do not express any opinion about this lease about which you know nothing, if there was another?

A. No. If that is the Hartley mine, I know about it. If it is not, I do not know. If you have the descriptions of the forties—

MR. KELLOGG: You mean the range and townships?

THE WITNESS: Yes; and the sections.

MR. KELLOGG: Do you want that?

MR. COLTON: You can take that up with him if you want to, later on.

By MR. COLTON:

Q. Lease of M. L. Fay and others to New York State Steel Company, dated October 22, 1906, royalty $1.00; estimated tonnage 3,200,000; largely Bessemer ore, Kellogg mines; underground mining.

MR. KELLOGG: I think the witness testified that it was $1.25 instead of $1.00.

By MR. COLTON:

Q. Do you recall anything about that mine?

A. I remember the time the lease was made. It was considered a very good deal for Mr. Fay.

Q. From the point of view of Mr. Fay?

A. The other people were satisfied, too.

Q. Is 3,000,000 tons a comparatively small body of ore?

A. It is not large.

MR. KELLOGG: It was 3,200,000 tons, was it not?

MR. COLTON: Yes. These, I believe, are all that precede in date the time of the lease?

MR. KELLOGG: That is all I have a memorandum of here that precedes the time of the lease.

MR. COLTON: And the date of the Hartley lease is January 1, 1907, which I believe is the same date as the lease.

MR. KELLOGG: The second.

By MR. COLTON:

Q. Mr. Nelson, leaving out of consideration the prevailing rate of royalty, state whether or not the value of a given mining property to the fee owner at a given time varies with any or all of the following factors: Number of tons of ore in the mine, cost of mining, grade of ore, prevailing price of the grade of ore in question, taken for a sufficient period of time to indicate its probable prevailing price in the future.

A. I do not think the tonnage makes so much difference, but the cost of mining and the grade of ore make a big difference. Usually the costs are figured out. They know just about what each ton of ore is going to cost to produce.

Of course, if you have to sink a shaft and go to a lot of expense, the more tons that a mine will produce, the more tons you will have to charge this capital against—depreciation, and so forth.

Q. Does the tonnage have a good deal to do with how quickly you can market that product?

A. It does in an open pit mine, but in the case of an underground mine you can only produce a certain tonnage through one shaft in a year.

Q. Take the largest mines: What would be about the annual output of the largest mines that you know of?

A. The Hull-Rust is the largest mine. I do not believe she has ever been worked up to capacity.

Q. To whom does the Hull-Rust mine belong?

A. The Steel Corporation.

Q. Have you any idea how much ore there is in the Hull-Rust mine?

A. Well, that is a very large mine. I believe the Tax Commission estimates the tonnage there as something about 75,000,000 tons.

Q. About how long do you think it would take to put that entire mine on the market, taking into account that you are not the only person in the business?

MR. REED: That is objected to as speculative and too vague.

THE WITNESS: Well, I think that mine——

MR. REED: It would only take 10 minutes to put it up for sale. I do not think Mr. Colton means that.

By MR. COLTON:

Q. I mean the ore on the market.

MR. REED: I object to that as speculative.

THE WITNESS: The cream portion of that mine, as long as it lasted—I think the mine, if it was pushed, would produce 5,000,000 tons a year. It is an ideal proposition, but then later on when it got to scramming it would take some time. That is, cleaning up the bottom and sides.

By MR. COLTON:

Q. Name the second largest mine you know of in the Mesabi region.

A. The Mahoning.

Q. Do you know approximately how many million tons of ore are contained in that mine?

A. I believe it is estimated to contain in excess of 50,000,000 tons of ore.

Q. Do you know whether the National Tube Company ever sold its interest in that mine?

A. I do not.

Q. State whether or not the rate of royalty at a given time of a given mine varies with any or all of the following

factors: Number of tons of ore in the mine, cost of mining, grade of ore, prevailing price of such grade of ore in question at lower lake ports, together with the average prevailing price for a sufficient length of time to give an indication as to the probable continuance of the then prevailing price.

MR. KELLOGG: Is not that the same question you asked him before?

MR. COLTON: No; I asked him specifically to leave out the question of royalty.

THE WITNESS: It does.

By MR. COLTON:

Q. Leaving out of consideration the prevailing rate of royalty, state whether or not the value of a given mining property to the fee owner at a given time varies with any or all of the following factors, or any other factors not here named: Number of tons of ore in the mine, cost of mining, grade of ore, prevailing prices of said grade of ore in question at lower lake ports, together with the average prevailing prices of said grade of ore for a sufficient period of time to give an indication that that prevailing price is likely to obtain on an average.

MR. KELLOGG: I would like to ask the witness if he understands it. I am frank to say I do not.

MR. COLTON: There is no reason why you should say you do not understand it. You can ask him if he understands it.

MR. KELLOGG: I am asking him if he understands it.

MR. REED: Does the rate of royalty vary with those factors or any other factors?

MR. COLTON: I said, "leaving out of consideration the prevailing rate of royalty." I was leaving out of consideration the prevailing rate of royalty.

MR. REED: I would like to have that question read.

(The first part of the question was repeated by the stenographer as follows:)

"Q. Leaving out of consideration the prevailing rate of royalty, state whether or not the value of a given mining property to the fee owner at a given time varies with any

or all of the following factors, or any other factors not here named:"

MR. REED: You ask whether the rate of royalty varies with those factors or any other factors.

MR. COLTON: I want all those factors, as I understood from his previous answers that those factors were to be taken into account. Now I want any other factors.

MR. REED: You haven't asked him that. You asked if the rates of royalty varied.

MR. KELLOGG: I object to the question in the first place because I do not understand it, I object to it in the second place because it is not a re-direct examination, and in the third place on the ground that the witness has stated with fullness both on direct and cross-examination that there were a great many factors, a great many of which, if not all of which, he enumerated then. On this particular question I do not think he ought to be led in this way on re-direct examination when his testimony has covered the point so fully before.

MR. COLTON: I withdraw the question.

By MR. COLTON:

Q. Give all the factors other than the prevailing rate of royalty which affect the value of a given mining property to the fee owner at a given time, taking the mining property to be located on the Misabi range?

A. It would be the mining costs, transportation costs, the grade of ore, and it would make a great difference who the fee owners were. That would be a consideration. That would make a difference, too. I think those would be the most important considerations. The tonnage would have some bearing on the subject.

Q. Why does the person holding it have any bearing on the subject?

A. Well, it would make a difference if he was financially able to carry the property. If the owner owns transportation facilities, or if he is in a position to go ahead and manufacture pig iron or steel. That would make a difference. On the other hand, if he was not financially strong and would not be

able to carry the property purchasers would take advantage of that.

Q. If he had a good property, couldn't he borrow money on it?

A. Well, if he owned the fee he could borrow money, but you cannot borrow money on a lease.

Q. The question was the fee ownership.

A. Oh, yes; you can borrow money on a fee, but you cannot on a lease, because a lease has a liability of royalties accruing all the time.

Q. With a fee property it would not make so much difference?

A. No.

Q. The financial standing of the individual holding the property—

A. He would not be liable to have to throw his property on the market the same as a leaseholder would.

Q. The market price of these mining properties would vary with what factors?

A. The number of customers in the market for properties would be an important factor. If there are a number of people in the market for properties, it would be easier to get good terms than if there were only a few customers.

Q. Will you go on and name all the other factors that would affect the market price of a property to the fee owner?

A. There would be the mining costs, transportation, the grade of the ore.

Q. In case this fee owner wishes to lease his property, what factors affect the rate of royalty which, under ordinary circumstances, he can get for the property?

A. It would be the mining costs, the grade of the ore, transportation cost to Lake Erie, where most of the ore is sold on Lake Erie; then it would make a difference how many customers there were in the market for ore properties. I suppose that would make a difference.

Q. Then the rate of royalty varies with the same sort of factors that cause the market value of the property to vary? Is that right?

A. Yes, sir.

Q. Is the rate of royalty considered a good index to the value of the property?

A. It is considered as an index of what the property was considered worth at the time when the deal was made.

Q. Do you know of any better indication of the value of the property than the rate of royalty; I mean, of its market price?

A. No, I think not.

MR. REED: How about the price it brings when it is sold?

MR. COLTON: I object to your coming into this. You have a perfect right to examine the witness when your turn comes. I do not think you should ask the witness a question now. He has already answered it.

MR. REED: I withdraw it.

By MR. COLTON:

Q. What advantages, if any, does the United States Steel Corporation enjoy over its competitors?

MR. REED: Just a moment. I object to the witness as incompetent, and to the question as incompetent, as calling for a conclusion. I object to the question also as entirely too vague and uncertain.

THE WITNESS: I think the Steel Corporation has a good deal better mines than any of its competitors. I think that is the great advantage which they enjoy; also owning its own transportation facilities is another advantage. That is up in our part of the country. I do not know what advantages they may have in other parts of the country that I do not know about. That is the great advantage they have up our way.

By MR. COLTON:

Q. Will you state how it acquired its advantage in so far as it relates to mining properties over its competitors?

MR. REED: That is objected to for the same reasons as those for which the last question was objected to.

THE WITNESS: When they took over the Lake Superior Consolidated and the Oliver and Carnegie interests they ac-

quired some very valuable mining properties on the Mesabi Range.

By Mr. Colton:

Q. Do you know whether the railroads that it acquired at that time had formerly been competitors of one another?

Mr. Reed: I object to that as calling for a conclusion; also because the witness has not been shown to be competent; further, for the reason that any such competition would have been wholly within the State of Minnesota.

The Witness: I think there was competition for business. There was no competition in the way of rates. Just friendly competition for business, I think, between those roads.

By Mr. Colton:

Q. Have they any steel works in Minnesota?

A. They are building a steel plant there now.

Q. They did not have any in 1901?

A. No steel works. There really is not a steel plant in Duluth yet, though they are building one. There are, however, blast furnaces there.

Q Were there any blast furnaces there in 1901, that you know of?

A. Yes, sir.

Q. Do you have any idea what percentage of ore was used in Minnesota at the time of the formation of the United States Steel Corporation?

A. Very little; a very small percentage.

Mr. Colton: That is all.

RE-CROSS EXAMINATION,

By Mr. Reed:

Q. Where have you spent the greater part of the past six months, Mr. Nelson; in what part of the country?

A. Up in Minnesota.

Q. What part of Minnesota?

A. On the Cuyuna Range.

Q. Are you pretty familiar with the developments in the Cuyuna District?

A. Yes, sir; I am quite familiar with them.

Q. Do you know the ore bodies that have been discovered there, as far as anybody knows them?

MR. COLTON: I object, on the ground that it is not material whether he knows as far as somebody else whose knowledge is not known.

MR. REED: After the Chesterfieldian objection, I will reform the question.

By MR. REED:

Q. Have you been in all of the mines in the Cuyuna District?

A. I have visited all of the mines that are open there with the exception of one, and that is the Barrows mine, M. A. Hanna & Company; I have not visited that.

Q. Have you seen any of the drill records of various explorations in that district?

A. Yes, sir; I have.

Q. Have you seen plans or prints of the workings of the mines in that district?

A. Yes, sir.

Q. Have you ever seen records of this mine in which you have not been—this Hanna mine?

A. No. All I know about that mine was what Dick Grant told me in Cleveland.

MR. COLTON: I object to that as hearsay.

By MR. REED:

Q. Who is he?

A. He is M. A. Hanna's man.

Q. How long have you known the Cuyuna District?

A. Ever since it was discovered, more or less?

Q How many properties are you interested in there?

A. We have two properties there.

Q. How many different bodies of ore or veins of ore are there in the Cuyuna Range?

A. There are practically two separate ranges there.

Q. Two separate ranges, but they are known collectively as the Cuyuna Range?

A. Yes. Locally they are known as the North and South Range.

Q. Are you familiar with both the North and South Range?

A. I am more familiar with the North Range.

Q. How long is the North Range, so far as present discoveries have uncovered it?

A. Well, it is five or six miles long.

Q. How long is the South Range?

A. Well, that is longer; that is about—they have got ore from Brainard and they have got ore from Deerwood. That is about fifteen miles between those two points.

Q. And ore has been discovered at various places between those two points, has it not?

A. Yes.

Q. What is the width of the ore body in that North Range?

A. Well, it varies. In our property it is from 200 to 500 feet in width, and I think it is pretty much the same way in the other mines. In those I have been underground in, I notice the same conditions prevail there. It kind of widens out and comes together.

Q. What is the average of all these variations, as closely as you can give it?

A. Well, that would be pretty hard to say.

Q. It gets as high as 600 feet thick, does it not, in places?

A. 500.

Q. 500 is about the limit?

A. That is as wide as I know.

Q. How deep has that vein been drilled? I do not mean how deep has it been mined, but how deep has it been drilled?

A. The deepest point on our property that we know of is 740 feet, but I have seen blue prints that showed up ore at a greater depth than that.

Q. How great?

MR. COLTON: Just a moment. I object to this line of questioning on the ground that it is not shown that the time which is now being spoken of was the time of the beginning of the Government's suit, or prior to the beginning of the Government's suit against the United States Steel Corporation.

By MR. REED:

Q. Was the same ore there at the time the Government's suit in this case began?

MR. COLTON: I object to that as irrelevant, as my previous question was as to the amount of development, and as to known tonnage, and not as to conditions of nature.

By MR. REED:

Q. Will you answer the question as to the depth to which these drillings have gone?

A. The deepest drilling that I know of is 825 feet.

Q. Was ore found at that depth?

A. Yes.

Q. Has any one yet found the bottom of that vein?

MR. COLTON: I object. It is not shown whether the witness knows.

THE WITNESS: It would be my opinion that there is a chance of the ore going deeper, seeing that they have found it at that depth.

By MR. REED:

Q. Has any one got to the bottom of the ore measures in that vein?

MR. COLTON: I object on the ground that the witness is not shown to have knowledge of what hundreds or thousands of other people may have done.

THE WITNESS: I do not think so; I do not know of anybody that has.

By MR. REED:

Q. And you have been in all of these workings except in those of the Hanna mine?

A. Yes.

Q. Now, on the South vein. That was the north vein you were speaking of?

A. Yes. This Barrows mine is on the South Range.

Q. Let us refer to the South Range. About what thickness does that ore run?

A. That is pretty narrow; twenty-five to fifty feet.

Q. Twenty-five to fifty?

A. Yes.

Q. How deep has that been drilled?

A. Well, sir; I do not know very much about that South Range. I have seen blue prints of drillings down there, but I do not remember the depth. They had a lot of trouble down in that country.

Q. It is harder mining?

A. It is hard to get a shaft down there. It is quicksand and wet. The New York Foundation Company, they dropped a lot of money down there getting down a concrete shaft.

Q. On which of those two ranges, then, were you basing the estimate which you gave us yesterday, of about 150,000,000 tons for the range?

MR. COLTON: I object to a termination of the witness' guess as an estimate, and I object further to further testimony on the ground that the witness has said that it came to about a guess on his part.

By MR. REED:

Q. Will you answer the question, please?

A. I was taking in the whole country.

Q. When you answered Mr. Colton that your estimate of 150,000,000 tons for the Cuyuna Range was only a guess, did you mean a figure picked at random, without regard to your knowledge of the district, or did you mean that was your estimate of which you could not be sure until the ore was actually mined? In other words, how would you define the word "guess" as you have used it?

A. I have never sat down and figured out the tonnage of the different known ore bodies there. You know in the mining business we do a lot of guessing, anyway.

Q. We want to understand, though, what you mean by the word "guess."

MR. COLTON: I object, because the word "guess" has a clear meaning in the English language, which is well known, and it is not a proper subject even for cross examination, and this is direct examination in regard to the Cuyuna Range and the amount of ore contained therein. I never went into

the question of the amount of ore contained in the Cuyuna Range, nor as to the amount of ore contained anywhere in those ranges.

THE WITNESS: I meant it was a kind of rough estimate; that is what I really meant.

By MR. REED:

Q. Is there anyone in the Cuyuna District, to your knowledge, who can make anything but a rough estimate, in view of present developments there? Has the Tax Commission done it?

A. Not yet, to my knowledge, unless during the last month or two.

Q. Has the exploratory work in the Cuyuna District progressed to a point where anyone can make anything but a rough estimate?

A. No, I do not think it has.

Q. The figure you gave us yesterday is your best estimate, based on your experience and your knowledge of the district?

MR. COLTON: I object to that on the ground that the witness on my cross examination, after your direct examination of the witness, said that his estimate of 150,000,000 tons was based on his own guess and a collection of guesses.

THE WITNESS: Yes.

By MR. REED:

Q. Other people have undertaken to make rough estimates of the tonnage there, I suppose?

A. Well, people have talked about it.

Q. What is the common talk up there as to the tonnage in that district, among the men who are interested in those properties?

MR. COLTON: I object on the ground that the people interested in a new mining country are well known to have extravagant ideas as to its prospective value; and when not based on any drillings or not on drillings sufficiently definite to show actual tonnage shown up, that it is immaterial, irrelevant and incompetent.

THE WITNESS: Naturally they talk pretty big up there. They think it is going to be a great country; but it has not gotten to that point yet.

MR. REED: You have not answered my question.

(The stenographer repeated the question as follows:)

"Q. What is the common talk up there as to the tonnage in that district, among the men who are interested in those properties?"

THE WITNESS: Naturally they talk very optimistically. They have great hopes, and expect to see that a great mining country.

By MR. REED:

Q. Can you give us any figures to explain what you mean by "great hopes" and "great expectations"?

A. It is just as easy to say 500,000,000 tons as it is to say 100,000,000 tons.

Q. Do they state such figures?

A. Oh, you can hear them around.

MR. COLTON: I object to this as hearsay, and as utterly incompetent.

By MR. REED:

Q. You spoke, this morning, about the present mining of the Steel Corporation on the Hill lands. It is a fact, is it not, that the Steel Corporation is behind the minima fixed in the Hill lease, and that it must hurry to get its minima out before the expiration of the lease on the few lands that it has retained?

A. That has been my impression.

Q. You spoke, also, about the freight rate on ore from the Michigan ranges to the lakes being less than that from the Mesabi range to the lake?

A. Yes, sir.

Q. It is a fact, is it not, that the haul, in most cases—in almost every case—is much shorter?

A. In all except one case, I believe.

Q. And what is that?

A. That is from the Crystal Falls district.

RE-CROSS-EXAMINATION,

By MR. KELLOGG:

Q. In listening to your answers to Mr. Colton in regard to the factors that go into the values of ores and leases of ore properties, I did not notice in any instance that what you told me yesterday differed from what you told him today. Did you intend in any way to change that testimony of yours on yesterday?

MR. COLTON: I object to summarizing the entire testimony of the witness and covering a day's testimony, on the ground that the witness cannot possibly recall all the different things about which he testified, and that it would be a mere opinion, also.

MR. KELLOGG: It looks as though Mr. Colton thought he had some little point in there that we did not notice.

By MR. KELLOGG:

Q. I will ask you whether, as a fact, you meant to change, in answer to Mr. Colton, any testimony you gave in answer to me as to the factors that entered into the valuation of ore lands and ore leases, and if so, to kindly point out in what respects you wish to change that testimony.

MR. COLTON: I repeat the same objection.

THE WITNESS: I might have made some additions.

By MR. KELLOGG:

Q. Do you recall any point in which you intended to change the substance of the testimony you gave me yesterday and today?

A. No, sir; not unless there were some additions.

Q. What additions do you recall? Because I did not notice any particular additions, and I want to be sure. What additions, if any, are there that you made in your testimony of today?

MR. COLTON: I object to that on the ground that it is not a proper question, calling on the witness for the great mental feat of remembering all the different things you named that you asked him yesterday, or that he named yesterday. If

you want to know what the factors are that entered into the valuation of ore lands and ore leases, you should ask what they are.

MR. KELLOGG: I am very glad if Mr. Nelson desires it, to have him look over any part of his testimony.

MR. COLTON: That is not the proper way to examine him.

MR. KELLOGG: Your objection is noted.

By MR. KELLOGG:

Q. Now, if you desire to look at any part of your testimony, Mr. Nelson, you are perfectly welcome to do so. I am not trying to catch you in any trap, or to make you exercise your memory unduly or anything of that kind. I simply want to know whether you intended today to make any substantial change in the testimony you gave to me yesterday, and if so, to have you put your finger on it and indicate what it was.

MR. COLTON: Same objection.

MR. KELLOGG: I guess we have found some little trap that we did not see here, Mr. Nelson, and I want to find out where it is. Mr. Colton has something in his mind, in those remarkable questions, where he thinks he has caught us napping; and I want to see where it is. First, I will repeat the question that I put to you before.

MR. COLTON: I was just going to suggest that you allow me to have the same objection to each repetition of the question.

MR. KELLOGG: Most emphatically. You shall have all the objections you want, of course. (To the witness) Would you like to have the question read?

THE WITNESS: Yes.

(The stenographer read the question referred to as follows:)

"Q. Now, if you desire to look at any part of your testimony, Mr. Nelson, you are perfectly welcome to do so. I am not trying to catch you in any trap, or to make you exercise your memory unduly or anything of that kind. I simply want to know whether you intended today to make any substantial

change in the testimony you gave to me yesterday, and if so, to have you put your finger on it and indicate what it was."

By Mr. Kellogg:

Q. You understand the question? After looking at your testimony, I shall be glad to have you tell me whether or not there is any substantial point you can think of in respect of which you understood you were changing or modifying the testimony you gave me yesterday.

Would you like to look at the testimony?

A. I believe I would.

(Mr. Kellogg thereupon handed to the witness a volume containing his testimony of yesterday.)

Mr. Kellogg: The last ten pages, I think, are the only ones containing questions that I put to you.

The Witness: I have found the place.

(After referring to his testimony of yesterday, and having the pending question read by the stenographer.)

The Witness: No, sir; I do not think so.

Mr. Kellogg: That is all.

Mr. Colton: Have you any further questions, Mr. Reed?

Mr. Reed: No. That is all.

By Mr. Colton:

Q. So far as the questions were the same today as they were yesterday, did you answer them the same? And if there is any difference in the answers, is it due to a difference in the questions which appear upon the face of the record?

A. I intended to give the facts to the best of my knowledge, in answer to every question.

Q. In each case you answered the question truthfully, as you were sworn to do, and that is all it comes to?

A. Yes, sir.

Mr. Kellogg: That is, wherever you understood the questions?

WILLIAM G. GRAY,

a witness called on behalf of the United States, having been previously sworn, testified further as follows:

RE-DIRECT EXAMINATION,

By Mr. Colton:

Q. Who are the officers of the association for whom you are now employed?

A. Judge Gary is president, and Mr. Bailey, of Harrisburg, is treasurer, and Mr. McCleary is secretary.

Q. What was the former name of the association for which you are now employed?

A. The American Iron and Steel Institute.

Q. What was the name of the association for which you were employed on December 26, 1912?

A. The American Iron and Steel Association.

Q. What was the first time that you heard that the American Iron and Steel Institute was to take over the American Iron and Steel Association?

A. In May of 1912.

Q. Did your report for 1912 come out subsequently to that date?

A. I do not recall the date.

Q. Have you got the report there?

A. Yes, the report for 1911 came out on the 12th of July, 1912.

Q. Your statistical bureau is not the entire American Iron and Steel Institute, is it?

A. No.

Q. The Bureau which you now carry on is to carry on the work previously carried on by the American Iron and Steel Association?

A. The statistical work only. It has not any other work. You will notice it says "continuation of the statistical work formerly done by the American Iron and Steel Association."

Q. Do you know whether for the year 1912 you are going to publish the same detailed statistics relating to the United States Steel Corporation?

A. We expect to.

Q. And the percentages of production for 1912?

A. I presume so. I do not know. We have not collected the information as yet.

Q. For the year 1912 the information is not in?

A. Oh, no; not all for 1912.

Q. About when may we expect that publication?

A. The pig iron figures are closed today.

Q. For the Steel Corporation?

A. For the whole country. We had word last night from every blast furnace in the country.

Q. You will be glad to give us those figures if we want them?

A. Certainly.

MR. BOLLING: Are you going to offer them in evidence?

MR. COLTON: I do not mean to offer them.

MR. BOLLING: I take it that Mr. Gray is not binding his association to furnish the figures for the case here?

MR. COLTON: Oh, no; I suppose Mr. Gray can answer for himself.

MR. SEVERANCE: What is the object, if you do not want them for evidence, of asking him on the stand to produce them? It is on the record that you have asked him to produce them. Do you want them produced?

MR. COLTON: I want them produced, and then, after looking them over, I will decide whether I will put them in or not.

MR. SEVERANCE: Then you have changed your mind about putting in testimony later than October, 1911?

MR. COLTON: I refuse to answer that question, as improper. We will govern ourselves accordingly.

MR. DICKINSON: No, we have not changed our mind on that. He has just stated that the matter was in reserve.

THE WITNESS: I might add that those figures are all preliminary.

MR. COLTON: I ask to have stricken out the remarks added by Mr. Gray as his own conclusion.

MR. SEVERANCE: Oh, no—keep that statement of counsel in the record.

By MR. COLTON:

Q. I show you a table entitled "Production of all kinds of pig iron in the United States by grades by the United States Steel Corporation and the independent companies in the calendar year 1901," and I ask to have the table so entitled marked for identification, with the statement that the note at the bottom of the page is not called for by the Government.

MR. SEVERANCE: Why don't you scratch it out?

MR. COLTON: Well, I will scratch it out.

MR. BOLLING: No, leave the record as it is.

MR. SEVERANCE: Very well.

(The paper referred to was marked Government Exhibit No. 345 for identification.)

By MR. COLTON:

Q. State what this table shows, column by column.

A. In the first column it shows production by grades. Shall I enumerate the grades?

Q. As therein stated.

MR. SEVERANCE: Does it not show for itself?

MR. COLTON: I think it worth while to do it at least for one.

THE WITNESS: In the first column the figures given cover the production of the United States Steel Corporation; in the second column, production of all companies other than the United States Steel Corporation; in the third column, the total production; in the fourth column, the percentage of production of the Corporation, and in the fifth column, the percentage of production of other companies.

By MR. COLTON:

Q. This is the total production of the United States in pig iron?

A. Yes.

Q. For both the United States Steel Corporation and for independents?

A. Yes.

Q. And this table was prepared from the same character of statistics that we had up for consideration on December 17th in Philadelphia when you were called?

A. Yes.

MR. COLTON: I offer in evidence Government Exhibit for identification 345.

MR. SEVERANCE: May I ask one or two questions before that is marked?

MR. COLTON: Certainly.

By MR. SEVERANCE:

Q. These figures are made up from statistics in the possession of the American Iron and Steel Association?

A. Yes, sir.

Q. You were at that time the Secretary?

A. No, statistician.

Q. I should say, statistician of that association?

A. Yes.

Q. The statistics from which this table was prepared were gathered by you by means of returns from various manufacturers of the country in the way you testified when previously on the stand?

A. Yes.

Q. You have no further information concerning the accuracy of those figures except the statistics that were so secured by your association?

A. That is correct.

MR. SEVERANCE: I will make the same objection to the introduction of the exhibit that was made in Philadelphia to the introduction of the books of the association. I also object because the exhibit is incomplete, as appears upon its face.

(The paper formerly marked for identification is now received in evidence and marked Government Exhibit 345, January 29, 1913.)

MR. SEVERANCE: Are you going to examine him as to each of the others, or are you just going to offer them.

By MR. COLTON:

Q. Does the table, independent of the note at the bottom of the page, show all the statistical facts?

MR. SEVERANCE: I object to that as incompetent, as not the

best evidence. The note at the bottom is in writing and says: "See note on page 1 concerning manufacture of ferro-manganese in this country." That being in writing is the best evidence upon the subject as to whether statistics are complete or incomplete.

By MR. COLTON:

Q. You may answer the question.

(The pending question was repeated by the stenographer.)

THE WITNESS: The statistics are figures for the whole country.

By MR. COLTON:

Q. Did I call upon you to produce anything other than statistics, Mr. Gray?

MR. SEVERANCE: I object to that as incompetent and immaterial.

THE WITNESS: No, except in this way, that you told me you were after facts.

By MR. COLTON:

Q. But I do not want all the facts that you may possibly conjure up from some region unless they relate to statistics?

A. Pardon me, you told me you were after facts, whether they operated for or against the Government.

Q. That is true.

A. (Continuing.) In this matter I gave you the general knowledge I had concerning the manufacture of ferro-manganese.

MR. SEVERANCE: Some of which operated against the Government.

MR. COLTON: I asked for statistical facts, did I not?

THE WITNESS: Yes, these are statistical facts. If you will read that note you will find—

By MR. COLTON:

Q. Don't argue.

A. I am not going to argue with you.

MR. SEVERANCE: Finish your answer.

THE WITNESS: (Continuing) If you will read the note you will find that some statistics are given there in relation to why we could not produce more ferro-manganese, and it also gives the production of manganese ore in this country, and the quantity of manganese ore imported into this country.

By MR. COLTON:

Q. What I asked for was the production by independents and the United States Steel Corporation, was it not?

A. Yes.

Q. Is not that all I asked you for?

A. In your letter, yes. Privately I did not so consider it, in the talk we had.

Q. That is all I now wish.

A. Yes.

Q. And that table covers that?

A. That table covers the production of the country.

Q. I will ask to strike out everything except what I called for.

MR. SEVERANCE: I object most seriously. That paper has been offered in evidence.

MR. COLTON: I withdraw the paper then.

MR. SEVERANCE: No, just wait a moment.

MR. COLTON: I can always withdraw a paper.

MR. SEVERANCE: Just a moment, we will see whether you can or not. I will put in a copy to take its place. I object to disfiguring or mutilating a paper already offered by counsel as testimony in this case, which has been marked for identification, and it is in the hands of the reporter, and it has been offered in evidence.

MR. COLTON: I did not offer the note, and I struck the note out, and I do not offer it now.

MR. BOLLING: The record does not show that he struck the note out.

MR. REED: The note itself shows that it has been erased or scratched over with pencil marks.

MR. SEVERANCE: Let the record show that there has been a pencil line drawn through part of the exhibit then, and that will be all right.

MR. BOLLING: Print it with a pencil line drawn through it.

MR. SEVERANCE: Certainly; photograph it, if necessary. I object to the cross examination of the witness produced by counsel; as his witness he should not be subjected to cross examination.

By MR. COLTON:

Q. Mr. Gray, I asked you to produce a table showing the production of all kinds of pig iron in the United States by grades, by the United States Steel Corporation and the independent companies in the calendar year 1902, giving those percentages without comment.

MR. BOLLING: I think we are entitled to have a copy of your demand for the production of documents by witnesses.

MR. COLTON: It is in the record.

MR. SEVERANCE: You mean you are demanding it now?

MR. COLTON: I am demanding it.

MR. SEVERANCE: Publicly, openly,—openly?

MR. COLTON: Yes. (To the witness) State what that table shows.

MR. SEVERANCE: Has the witness produced it?

By MR. COLTON:

Q. Did you produce that document?

A. I produced the document, but I did not erase anything on it.

Q. Will you produce that document now?

MR. BOLLING: It does not come from his possession now.

MR. SEVERANCE: It comes from your possession.

MR. COLTON: I do not object to that.

By MR. COLTON:

Q. I will ask you how that document is made up.

MR. SEVERANCE: Will you kindly identify it?

MR. COLTON: I will ask that it be marked for identification.

(Paper referred to was marked Government Exhibit 346, for identification.)

THE WITNESS: This was made up in exactly the same manner as the figures or the statement for 1901.

By Mr. Colton:

Q. State this separately, as there are several objections to that for 1901, please state this separately.

A. The first column of figures represents the production by the Corporation; second column represents the production by all other companies; the third represents the total for the country, and the fourth the percentage of the Corporation; and the fifth represents the percentage of the independents, or all other companies.

Q. Is that correct—that table that you have there?

A. Yes.

Mr. Severance: You concede, do you not, Mr. Colton, when he says that is correct, that he is referring

Mr. Colton: (Interposing) To the table he has before him.

Mr. Severance: Let me finish, please. Do you concede that he is referring to figures that are made up from the same sources as those from which Exhibit No. 345 was made up?

Mr. Colton: Certainly.

Mr. Severance: That is what I wanted to get at,—that it is conceded that he knows nothing personally, except what he gets from the sources which he explained in connection with Exhibit No. 345?

Mr. Colton: As given in Philadelphia.

Mr. Severance: And as he gave with reference to Exhibit No. 345?

Mr. Colton: I do not want to refer to Exhibit No. 345, because there is an objection to Exhibit No. 345 that cannot be made to this table I have here.

Mr. Severance: He was examined with relation to Exhibit No. 345.

Mr. Colton: Yes.

Mr. Severance: That is what I mean; that he got his statistics from that body of statistics that he possesses at Philadelphia. That is right, is it not, Mr. Gray?

The Witness: Yes; that is right.

Mr. Colton: I offer in evidence the exhibit which has been marked No. 346 for identification.

Mr. Severance: I make, as regards this Exhibit No. 346, each and every objection that was made to Exhibit No. 345;

and desire to have it printed in the condition in which it now appears.

(The paper referred to was thereupon marked Government Exhibit No. 346, January 29th, 1913.)

By Mr. Colton:

Q. I show you a paper entitled "Production of all kinds of pig iron in the United States by grades, by the United States Steel Corporation and the independent companies, in the calendar year 1903," with the words "sheet 4" stricken out and the words "See Note on page 1, concerning the manufacture of ferro-manganese in this country" also stricken out. The document contains all statistical facts in reference to the percentage of pig iron produced by the Corporation by grades and by independent companies by grades for the United States. I ask that it be marked for identification.

(The paper referred to was thereupon marked "Government Exhibit No. 347 for identification.")

Mr. Severance: I would like to ask one preliminary question:

By Mr. Severance:

Q. Mr. Gray, are the figures appearing on Exhibit No. 347 obtained by you from the same sources of information as the figures appearing on Exhibits 345 and 346?

A. Yes, sir.

Q. I see some pencil marks through certain lines on this sheet. Were they made by you?

A. No, sir.

Q. The document was prepared by you with the note and the sheet number that appeared there?

A. Yes.

Mr. Severance: I make the same objection to this exhibit as that heretofore made to Exhibits Nos. 345 and 346.

Mr. Colton: I will explain that I struck out the words "Sheet 4" and I also struck out the words "See note on page one concerning the manufacture of ferro-manganese in this country," because I asked the witness to produce statistical facts, and did not call for an explanation of the statistics.

I offer in evidence the table showing the statistical facts called for by the Government.

MR. SEVERANCE: I make the same objection to this exhibit as that heretofore made to Exhibits Nos. 345 and 346.

(The paper referred to was thereupon marked Government Exhibit No. 347, January 29, 1913.)

By MR. COLTON:

Q. I now ask you to identify a paper on which there is stricken out the words "Sheet 5" and on which there is stricken out in pencil mark "See note on page one concerning the manufacture of ferro-manganese in this country," and ask you to state whether the statistical facts called for in the paper with said note stricken out, are all the statistical facts that the Government asked you to produce.

A. Yes.

MR. SEVERANCE: He has already answered that they are not.

MR. COLTON: He has just said "yes" to that question.

MR. SEVERANCE: He could not have understood your question, then.

THE WITNESS: So far as the figures are concerned, they are there and they are correct.

By MR. COLTON:

Q. Did I ask you, Mr. Gray—

MR. SEVERANCE: I do not think Mr. Gray understood your question, Mr. Colton.

By MR. COLTON:

Q. Did I ask you to prepare a table not involving figures?

A. No, I do not think you did.

MR. COLTON: I ask to have this table marked as an exhibit, and I offer it in evidence.

MR. SEVERANCE: Preliminary to an objection to your offer, may I ask the witness one question, Mr. Colton?

MR. COLTON: Certainly.

By MR. SEVERANCE:

Q. These figures that appear on Exhibit No. 348 were ob-

tained by you from the same source of information as the figures on the three preceding exhibits?

A. Yes, sir.

Q. And was the exhibit, when prepared by you—

MR. COLTON: I object to referring to it as an exhibit, because the exhibit is in the form in which it is now offered. I handed it to him in that form.

MR. SEVERANCE: But may I not ask a question, Mr. Colton? Will you not please allow me to ask a question?

MR. COLTON: You referred to it as an exhibit. I beg your pardon. Go ahead.

By MR. SEVERANCE:

Q. When you originally prepared this Exhibit No. 348, did it have on it the notation which counsel says he has stricken out?

A. Yes, sir.

Q. And do the matters on this note that is referred to relate to statistical matters?

A. Yes.

MR. SEVERANCE: I make the same objection to this exhibit as that made to the three preceding exhibits.

(The paper referred to was thereupon marked Government Exhibit No. 348, January 29, 1913.)

By MR. COLTON:

Q. I hand you a paper on which there is stricken out the words "Sheet 6" and "See note on page 1 concerning the manufacture of ferro-manganese in this country", and ask you to state whether or not the table with said words stricken out covers the percentages as called for by the Government, and as to whether that was not all that the Government asked you to produce.

MR. SEVERANCE: That is a double question.

MR. COLTON: He can answer each one in succession.

MR. SEVERANCE: That is two questions, you understand Mr. Gray?

THE WITNESS: Yes.

(By request of the witness, the stenographer repeated the first part of the pending question, as follows:)

"Q. I hand you a paper on which there is stricken out the words "Sheet 6," and "See note on page 1 concerning the manufacture of ferro-manganese in this country," and ask you to state whether or not the table with said words stricken out covers the percentages as called for by the Government."

THE WITNESS: Yes.

MR. COLTON: I ask that this paper be identified as an exhibit, its title being "Production of all kinds of pig iron in the United States by grades, by the United States Steel Corporation and independent companies, in the calendar year 1905."

(The paper was thereupon marked Government Exhibit No. 349 for identification.)

By MR. COLTON:

Q. How was that exhibit prepared?

A. In exactly the same manner as the others.

MR. COLTON: I offer said exhibit in evidence.

MR. SEVERANCE: Do you withdraw your other question? You asked Mr. Gray a double question. He answered the first part of the question, and did not answer the latter part of it.

MR. COLTON: Do you want any further answer? He answered it to my satisfaction.

MR. SEVERANCE: He has not answered it at all.

THE WITNESS: I answered the first part of the question. The second part of it was not given to me.

(By request, the stenographer read the question referred to as follows:)

"I hand you a paper on which there is stricken out the words "Sheet 6," and "See note on page 1 concerning the manufacture of ferro-manganese in this country," and ask you to state whether or not the table with said words stricken out covers the percentages as called for by the Government, and as to whether that was not all that the Government asked you to produce."

THE WITNESS: The first part was answered. The second part was not.

By Mr. Colton:

Q. What is the answer, Mr. Stenographer? I will be the judge of whether it was answered or not.

Mr. Severance: I do not think you are entirely in control of that.

Mr. Colton: I want to know what the answer is. I want to have it read.

Mr. Severance: So do I.

(By request, the stenographer read the answer as follows:)

"A. Yes."

Mr. Severance: I ask that the witness be permitted to finish his answer.

The Witness: So far as the second part of the question is concerned, it covers the production of the country, but it did seem to me that, in a case of that kind, it was necessary for me to make the explanatory note that I put in there, and to give that explanation. For that reason it went in.

By Mr. Colton:

Q. But it was not called for by me?

A. You did not ask for that note.

Mr. Severance: I make the same objection to this Exhibit No. 349 as that already made to the four preceding exhibits.

(The exhibit referred to was thereupon marked Government Exhibit No. 349, January 29, 1913.)

By Mr. Colton:

Q. I ask that the paper with the words "Sheet 7" stricken out, and with the words "See note on page 1 concerning the manufacture of ferro-manganese in this country" stricken out, be marked for identification, said table being entitled "Production of all kinds of pig iron in the United States by grades by the United States Steel Corporation and the independent companies in the calendar year 1906."

(The paper referred to was thereupon marked Government Exhibit No. 350, for identification.)

Mr. Colton: I offer that table in evidence.

MR. SEVERANCE: I make the same objection to that as to the preceding exhibits.

(The table referred to was thereupon marked Government Exhibit No. 350, January 29, 1913.)

MR. COLTON: I show you a table marked with the words "Sheet 8" stricken out and the words "See note on page 1 concerning manufacture of ferro-manganese in this country" stricken out; said table being entitled "Production of all kinds of pig iron in the United States by grades by the United States Steel Corporatiton and independent companies in the calendar year 1907." I ask to have that table marked for identification, as I have several questions to ask concerning it before I offer it in evidence.

(The table referred to was thereupon marked Government Exhibit No. 351 for identification.)

By MR. COLTON:

Q. In preparing Government Exhibit No. 351 for identification did you reach any dilemma as to what was to be done with the tonnage of the Tennessee Coal, Iron & Railroad Company for that year?

A. We did not reach any dilemma; we simply included it with the production of the United States Steel Corporation.

Q. It is included, then?

A. It is included in that table.

Q. The table in question, then, shows the same character of statistics referred to in the other tables except for the year 1907, including the Tennessee Coal, Iron & Railroad Company?

MR. SEVERANCE: Made up from the same sources?

By MR. COLTON:

Q. (Continuing) Made up from the same sources?

A. Yes.

MR. COLTON: I offer said table in evidence.

MR. SEVERANCE: The same objection. Did you strike out that note about the Tennessee Coal & Iron?

MR. COLTON: I did not. I do not care whether it is stricken out or not.

MR. SEVERANCE: I did not know. I just wanted to ask. As long as it shows what it is.

MR. COLTON: I do not make any objection if it gives what I called for.

(The paper referred to was thereupon marked Government Exhibit No. 351, January 29, 1913.)

By MR. COLTON:

Q. I show you a table with the words "Sheet 9" stricken out, and also the words "See note on page 1 concerning the manufacture of ferro-manganese is this country," said table being entitled "Production of all kinds of pig iron in the United States by grades by the United States Steel Corporation and the independent companies in the calendar year 1908."

(The table referred to was thereupon marked Government Exhibit No. 352 for identification.)

By MR. COLTON:

Q. I ask you whether that table includes all of the production by the United States Steel Corporation and its subsidiaries, including the Tennesse Coal, Iron and Railroad Company.

MR. SEVERANCE: You mean so far as shown by the sources of information he has described, do you not?

MR. COLTON: Yes; it was made up from the same sources of information.

THE WITNESS: Yes, it does.

By MR. COLTON:

Q. This covers the production in every case for those particular grades for the entire United States?

A. It does.

MR. COLTON: I offer that table in evidence.

MR. SEVERANCE: I make the same objection to that as to the preceding exhibits.

(The table referred to was thereupon marked Government Exhibit No. 352, January 29, 1913.)

(At this point, by request of Mr. Colton, another paper was marked for identification Government Exhibit No. 353.)

By Mr. Colton:

Q. I show you another table, Government Exhibit No. 353 for identification, with the words "Sheet 10," and "See note on page 1 concerning the manufacture of ferro-manganese in this country," stricken out, said table being entitled "Production of all kinds of pig iron in the United States by grades by the United States Steel Corporation and the independent companies in the calendar year 1909." I ask you whether or not the percentages stated in the table show the production by independents and the United States Steel Corporation for the year in question, in the same manner.

Mr. Severance: You mean as disclosed by the sources of information?

Mr. Colton: Yes, that is understood in each case; the same sources of information.

The Witness: Yes, it does.

By Mr. Colton:

Q. Did I call for that note: "Reported to American Iron and Steel Association as 82,209, and subsequently changed to 82,208?"

A. No.

Q. But the figures in that table are the most correct figures that you could get?

A. They are all right. That was just a clerical error.

Mr. Severance: Have you stricken that out, or do you leave it in?

Mr. Colton: I will allow you to do as you like about it.

Mr. Severance: I say, what have you done?

Mr. Colton: I have not stricken it out. I will if you wish.

Mr. Severance: I do not want it stricken out. I was just asking for information.

By Mr. Colton:

Q. And it includes the Tennessee Coal, Iron & Railroad

Company, as that company was at that time a subsidiary of the United States Steel Corporation?

A. It does.

(At this point another paper was marked Government Exhibit No. 354, for identification.)

MR. COLTON: You consent to the offer of Government Exhibit No. 353 for identification, if it was inadvertently omitted, and I consent to the same objection?

MR. SEVERANCE: Yes, that is all right.

(Government Exhibit No. 353 for identification was thereupon marked Government Exhibit No. 353, January 29, 1913.)

By MR. COLTON:

Q. I show you a table entitled Government Exhibit No. 354 for identification, with the words "Sheet 11" stricken out and the words "See note on page 1 concerning the manufacture of ferro-manganese in this country" stricken out, and I ask you as to whether the exhibit covers all the statistics which the Government called for.

A. Just the same as the other.

MR. COLTON: I offer it in evidence.

MR. SEVERANCE: With the understanding that it is prepared in the same manner and from the same sources as the others; was it not?

THE WITNESS: It was.

MR. SEVERANCE: I object to it on the same grounds as to the last preceding offer.

(The table previously marked Exhibit No. 354 for identification was thereupon marked Government Exhibit No. 354, January 29, 1913.)

By MR. COLTON:

Q. Could you tell me for what purpose gray forge—is that the expression?

A. Gray forge.

Q. What use is made of that?

A. For puddling in a rolling mill.

Q. Can that be used for steel-making purposes?

A. No, it is not so used.

Q. How about foundry; does that mean foundry pig iron?

A. Foundry pig iron, for making iron castings.

Q. Can that be used for steel-making?

A. It is not so used.

Q. And this, entitled "ferro-silicon," is that a separate kind of pig iron?

A. That is an iron containing a high percentage of silicon, running in our case to anything above seven per cent; it runs up to twelve, fourteen and sixteen, and then when you get to electrolytic, it runs fifty per cent.

Q. Is it used for steel-making?

A. I am not a technical man, but it is used for steel-making purposes.

Q. Do you know what percentage of this table that combines foundry and ferro-silicon is foundry iron, and what percentage of it is ferro-silicon?

A. I can give it to you for any particular year. It varies.

Q. I should like it for each year, first for each year that you can give it. You may not have all your books here.

A. I can give it for 1911.

Q. Separate the foundry pig iron from the ferro-silicon.

A. I can give it to you for 1911, but unfortunately—

Q. I have not asked for the figures for 1911.

A. That is just what occurred to me at the time. Just wait one moment. I can give it to you for 1907.

By Mr. Severance:

Q. What are you reading from?

A. I am going to read from the annual report for 1907, the annual report of the American Iron and Steel Association.

Q. And the figures therein which you are about to read were secured by you from the same sources as the other figures which you have been testifying about?

A. Exactly.

Mr Severance: I object to the question, in view of what the witness says, on the same grounds as were interposed at the hearing in Philadelphia when statistics were offered from these publications by counsel.

The Witness: The 5,151,209 gross tons, foundry pig iron, for 1907, are 87,898 tons of ferro-silicon and Bessemer ferro-silicon.

Mr Severance: The balance of it is foundry?

THE WITNESS: The balance of it is foundry.

By MR. COLTON:

Q. This is the only year you can give it for at this time?

A. The only year I have with me, outside of 1911.

Q. I do not wish it for 1911. It is contained in these statistics?

A. Yes.

MR. COLTON: I will ask counsel if these figures may be copied for the respective years subject to the same objection.

MR. SEVERANCE: What years?

MR. COLTON: For the years 1901 to 1910, inclusive, which have been offered in evidence.

MR. SEVERANCE: That is, you want to have him get the data and furnish it?

MR. COLTON: Yes; if you will copy that and furnish it to us.

THE WITNESS: Yes.

MR. SEVERANCE: You mean simply to make a separation of those two?

MR. COLTON: Yes.

MR. SEVERANCE: If that is subject to the same objection, there is no reason why that should not be done.

THE WITNESS: The figures appear in the report for each year.

MR. COLTON: I should also like the Tennessee Coal, Iron & Railroad Company, its separate production in pig iron for the year 1907.

MR. SEVERANCE: That may be furnished subject to the same objection. How are you going to have that sent?

MR. COLTON: I think if you send a copy to the Steel Corporation and a copy to me, we could probably put it in evidence without any further formality.

MR. SEVERANCE: Stipulate it, yes.

MR. COLTON: I want to make it perfectly clear what I want. I want the foundry pig iron separated from all other kinds of pig iron. I want the silicon also, and I want in any event to have the foundry iron separate.

THE WITNESS: As I understand it, then, you call for foundry alone and silicon alone?

MR. COLTON: Yes.

By MR. COLTON:

Q. There are two kinds of silicon?

A. Two or three kinds.

Q. Silicon is comparatively unimportant?

A. Very important to a steel maker.

Q. I mean in tonnage?

A. Yes.

MR. REED: You mean ferro-silicon?

MR. COLTON: Is comparatively unimportant in tonnage.

MR. SEVERANCE: It is more important than ferro-manganese, or about as important.

THE WITNESS: Higher priced.

(Here another paper was marked for identification Government Exhibit No. 355.)

By MR. COLTON:

Q. What is electrical steel?

A. In this country it is steel purified or refined by electricity; made usually here from molten metal taken from an open hearth furnace or a Bessemer converter or a crucible furnace.

Q. The tonnage produced of this character of steel up to the close of the year 1910 was comparatively small?

A. Yes, in the United States, you mean.

Q. Is that class of steel difficult to classify or not?

A. Well, we classify it as electric steel, but it is really open hearth, or usually refined in an open hearth furnace, using electricity as a heating agent.

MR. SEVERANCE: What is the difficulty about classifying it then? I do not see any.

THE WITNESS: There is no difficulty about classifying it.

MR. SEVERANCE: That is the question counsel asked. I wondered what the mystery was about it.

MR. COLTON: Just a moment; there is no objection to telling him or telling Mr. Severance what the reason was. In speaking to Mr. Gray I understood him to say that there was some electrical steel, and it was a little difficult to say whether it was made by open hearth process or whether it was made by the Bessemer process. My recollection may be entirely wrong, and probably is.

THE WITNESS: Electric steel is made in this country as a

rule from molten metal taken from Bessemer converters and from open hearth furnaces and crucible furnaces, and further purified in an electrical furnace which is really an open hearth furnace operated by electricity; that is, electricity is the heating or melting agent. Here it is a refining agent. Abroad it is more of a melting agent.

By Mr. Colton:

Q. How does the United States Steel Corporation report electrical steel?

A. It reported to us as open hearth steel, and then at our request it separated from its open hearth output the quantity refined in an electrical furnace. In its own annual reports they include electrical steel with the open hearth steel.

Q. I show you a table marked for identification Government Exhibit 355, entitled "Comparative production of steel ingots and castings by the United States Steel Corporation and independent companies in 1909 and 1910, compiled by the Bureau of Statistics of the American Iron & Steel Association, 261 South Fourth Street, Philadelphia."

A. I think that is an error. I would like to substitute "institute" there for "association."

Mr. Colton: There is no objection to that substitution.

The Witness: Compiled by the Bureau of Statistics of the American Iron & Steel Institute.

Mr. Severance: The statistics were obtained by the old association, from the old association statistics.

The Witness: Yes, this table was compiled by the Institute. That is the only thing.

Mr. Severance: It was simply compiled by you from statistics of the association?

The Witness: That is right.

Mr. Colton: That will appear sufficiently. I do not care to have the table changed.

Mr. Severance: The Institute had nothing to do with getting the statistics in 1909 and 1910.

The Witness: It was compiled by me after the formation of the Institute.

Mr. Severance: Compiled by you?

The Witness: Yes.

By Mr. Colton:

Q. Did the Association request the United States Steel Corporation to report its electrical steel separately to the association?

A. It did.

Q. And the United States Steel Corporation complied with the request, did it?

A. It did.

Q. I ask you to state what Government Exhibit No. 355 shows in respective columns?

Mr. Severance: It shows on its face, does it not?

Mr. Colton: I will let him answer; it will straighten us out.

The Witness: For the year 1909, column 1 of figures gives the production of the Corporation; column 2 the production by all other companies, and column 3 the total production for the country. In the 1910 table, the first column contains the production of the Corporation, the second that of the independents, and the third the total for the whole country.

By Mr. Colton:

Q. What are steel ingots?

A. Steel cast either from a Bessemer converter or from an open hearth furnace or from a crucible furnace into moulds. Those moulds are stripped and the ingot is the result of the product.

Q. Is there any steel made that is not made from ingots?

A. Yes, direct castings are not made from ingots.

Q. Do you know whether the casting tonnage is large or small?

A. Fairly large, in 1907.

Q. Have you got it there?

A. Yes.

Q. Suppose you give it to us?

Mr. Severance: I will ask if the witness is about to read from the 1907 publication of the association.

The Witness: Yes, page 66.

Mr. Severance: I make the same objection as was made at the hearing in Philadelphia to the figures there, it being conceded that they are made from the same sources.

THE WITNESS: In 1907 the production was 803,117 gross tons.

By MR. COLTON:

Q. Have you any other years in that book?

A. Yes, we can go back to 1901, if you wish them.

Q. If you will give them for each of those years, subject to the same objection.

A. 1901, 317,570; 1902, 390,935; 1903, 430,265; 1904, 330,211; 1905, 560,767; 1906, 773,705; 1907 you have.

MR. COLTON: I offer this table in evidence.

MR. SEVERANCE: I make the same objection to that as to the preceding exhibits, except that I do not object on the ground that it is incomplete, as the table seems to be complete, whatever it is. Did you leave the note on, or is it stricken out?

MR. COLTON: I left it on, but I embodied in my question all the information contained in the note.

(The paper referred to was received in evidence and marked Government Exhibit No. 355, January 29, 1913.)

MR. COLTON: I ask to have marked for identification another table, said table being entitled "Comparative production of all kinds of finished rolled iron and steel by subsidiary companies of the United States Steel Corporation and by the independent companies in 1907."

(The paper referred to was marked Government Exhibit No. 356 for identification.)

By MR. COLTON:

Q. I will ask you to state whether the production of the Tennessee Coal, Iron & Railroad Company was included within the percentages given under the Corporation's column.

MR. SEVERANCE: The note says so.

MR. COLTON: I am asking for an answer so that the information I called for will be complete. I called for statistical information.

THE WITNESS: My impression is that it was not included.

By MR. COLTON:

Q. And you think that note is an error?

A. I think there may be an error there. I may be wrong. Just one minute, it says it is included there.

Q. Will you verify that?

A. I will.

Q. And will you also give the production of the Tennessee Coal, Iron & Railroad Company separately for that year, as you are going to do for the year 1907 in the case of pig iron?

A. What is it you ask me to give?

MR. COLTON: I want the production of the Tennessee Coal, Iron & Railroad Company of all kinds of finished rolled iron and steel products manufactured by it for the year 1907.

MR. SEVERANCE: What is your final conclusion about whether the Tennessee Coal, Iron & Railroad Company production is in that Exhibit 356.

MR. COLTON: You can ask him.

MR. SEVERANCE: I am asking you.

MR. COLTON: He said he would like to look it up. He says his memorandum says that it is in, and he has a vague recollection that it is not, and he would like to look it up and will notify us in regard to it. Subject to correction I offer the table in evidence.

MR. SEVERANCE: Before I make an objection, may I inquire whether 356 is made up from the same sources of information as the other statistics which you have given?

THE WITNESS: Exactly.

MR. SEVERANCE: I object to it on the same grounds that I objected to these statistics at the meeting in Philadelphia.

MR. COLTON: I offer the said table in evidence.

MR. SEVERANCE: The same objection.

(The paper referred to was received in evidence and marked Government Exhibit No. 356, January 29, 1913).

MR. COLTON: I ask to have marked for identification the table entitled "Comparative production of all kinds of finished rolled iron and steel by subsidiary companies of the United States Steel Corporation and by independent companies in 1908.

(The paper was marked Government Exhibit No. 357 for identification).

THE WITNESS: May I insert the word "not"?

MR. SEVERANCE: Yes, insert the word "not" in Government Exhibit No. 356, and let him notify us if that is incorrect.

MR. COLTON: I have asked for the production of the Tennessee Coal, Iron & Railroad Company, so that will straighten us out.

By MR. COLTON:

Q. In 1908 the Tennessee Coal, Iron & Railroad Company was a subsidiary of the United States Steel Corporation?

A. Yes.

Q. Consequently it would be included within any table that showed the total figures for the subsidiaries of the United States Steel Corporation?

A. That is correct.

MR. COLTON: I offer Exhibit 357 for identification in evidence.

MR. SEVERANCE: With the understanding that it is made up from the same sources as the other tables heretofore offered, I object to it on the same ground, that the statistics offered in Philadelphia from the same sources were objected to.

(The paper referred to was received in evidence and marked Government Exhibit No. 357, January 29, 1913.)

MR. COLTON: I ask to have marked for identification the table entitled "Comparative production of all kinds of finished rolled iron and steel by the subsidiary companies of the United States Steel Corporation and by independent companies in 1909.

(The paper was marked Government Exhibit No. 358 for identification.)

By MR. COLTON:

Q. Do Government Exhibit 356 to Government Exhibit 358 cover the entire United States in respect to the several products named?

A. Yes.

Q. And give separately the percentages of the United States Steel Corporation and independent companies?

A. They do.

MR. COLTON: I offer Exhibit 358 for identification in evidence.

MR. SEVERANCE: I object to that on the same grounds as the last exhibit.

(The paper referred to was received in evidence and marked Government Exhibit No. 353, January 29, 1913).

MR. COLTON: The Government has not called for nor produced in evidence a paper entitled "Sheet 1, pig iron production by grades by the United States Steel Corporation and by independent companies from 1901 to 1910, inclusive" which is referred to in the notes to the several tables concerning pig iron production, which reference I struck out from each of the tables, as not called for. I now present the note in question to counsel for the United States Steel Corporation for their examination and information.

MR. SEVERANCE: I ask that the paper just referred to be marked for identification.

(The paper referred to was thereupon marked Defendant's Exhibit No. 29 for identification.)

MR. COLTON: That is all.

RE-CROSS EXAMINATION.

By MR. SEVERANCE:

Q. I show you a paper marked Defendant's Exhibit No. 29 for identification. What is that?

A. That concerns the manufacture of ferro-manganese for all the United States.

Q. Which was referred to by counsel for the Government in his statement a moment ago?

A. Yes.

Q. Was that attached to and furnished with the statistical tables upon which these notes appeared, and which have been offered in evidence as Government Exhibits Nos. 345 to 354?

A. It was.

MR. SEVERANCE: I offer that in evidence as a part of the cross examination of this witness.

MR. COLTON: I object, on the ground that it is not proper cross examination, as the witness has already testified that the note in question was not called for by counsel for the Government, and is irrelevant, immaterial and hearsay, and

the source of information is not shown, and not in accord with the evidence already put in by the Government in this case from the Carnegie Steel Company's minutes.

MR. SEVERANCE: It would be too bad to contradict any of the Government's testimony.

MR. COLTON: I will strike out my objection so far as it refers to the evidence already in.

(The paper referred to was thereupon marked Defendant's Exhibit No. 29, January 29, 1913.)

By MR. SEVERANCE:

Q. Mr. Gray, did I not understand you to say, in your direct examination, that, in addition to the letter written to you by counsel for the government, requesting you to furnish certain statistics, he also made an oral request of you, which you detailed, in which he asked you for full information, or something like that? What is the fact about that?

A. That was some time prior to this. In conversation about statistical matters, he made the statement to me that he was after the facts; so I gave him what I considered to be the facts in this case, the same as I did in the application for Electric Steel.

Q. Which note was put in evidence, was it not?

A. Yes, it was.

MR. COLTON: I asked him questions concerning that.

By MR. SEVERANCE:

Q. Mr. Gray, do your statistics that you have in your publications disclose the importations of ferro-manganese into the United States and their values?

A. Yes.

Q. Have you, at my request, made up a table from those annual reports, showing the gross tons imported, and the value in the various years from 1901 to 1910?

A. Yes.

Q. Will you produce that, please?

(The witness produced a paper which was marked Defendants' Exhibit No. 30, for identification.)

By Mr. Severance:

Q. I show the witness the paper which has been marked Defendants' Exhibit No. 30 for identification, and ask if the figures appearing upon that exhibit were made by him from the annual reports of the association, as stated thereon.

A. Yes, sir.

Q. I will ask if the figures contained in these annual reports were obtained by you in the same manner as the other statistics about which you have testified?

A. These were obtained from the Department of Commerce and Labor at Washington.

Q. I understand that. That is what I wanted to ask you. These figures that appear here were not furnished by steel makers, but were furnished by the Department of Commerce and Labor at Washington, and verified by that department?

A. Yes.

Q. Is that so as to the earlier years?

A. It is so for the whole period.

Mr. Colton: I do not want to ask this question, but I want to ask whether you will ask him as to whether every one of these tables was just the same as 1901. There is only one here. Is this the only one you have?

Mr. Severance: You have it all there, from 1901 to 1919. It is all there.

Mr. Colton: I have the whole thing here?

The Witness: Yes, from 1901 to 1919.

Mr. Colton: All right.

By Mr. Severance:

Q. Then this Exhibit, "Defendants' Exhibit No. 30 for identification," I understand shows the gross tons of ferromanganese imported into the United States in each year from 1901 to 1919, together with the value of the ferromanganese for those respective years at the point of shipment?

A. That is right. Those are calendar years.

Q. And those figures were furnished to your association by the Bureau of Statistics of the Department of Commerce and Labor?

A. That is right.

Q. And you know that they are correctly set forth as so furnished upon this exhibit?

A. We sent a proof to the Department of Commerce and Labor, and it was verified by them and returned to us, sometimes with alterations, but we always took that course.

MR. SEVERANCE: I offer this exhibit in evidence as a part of the cross examination of the witness.

MR. COLTON: I object, on the ground that it is not proper cross examination. If counsel will offer it on other grounds, I will withdraw the objection. If it is offered as a part of the cross examination, I will object on the ground that it is incompetent, and that this is not the proper witness by which to prove it. If it is offered as independent evidence on the part of counsel, I have no objection.

MR. SEVERANCE: It is offered as a part of the cross examination of this witness.

(The paper referred to was thereupon marked "Defendants' Exhibit No. 30, January 29, 1913.")

By MR. SEVERANCE:

Q. Mr. Gray, what duty is there, if any, on ferro-manganese?

A. It is now $2.50 per ton.

Q. What was the duty from 1897 to August 5, 1905, when the Payne-Aldrich bill was passed?

A. $4.00 per ton.

Q. That was one case where they revised it downward, was it?

A. Yes.

Q. Can you tell about what the average price of ferro-manganese is?

A. It differs. Now the price at seaboard is from $65 to $68. It has been down as low as $45. I can give you the average for a series of years.

Q. What book have you there?

A. The annual report of the American Iron and Steel Association for 1911, page 42.

Q. Let us have it, please.

A. We have here the average monthly prices of ferro-manganese at Pittsburgh from 1907 to 1911.

Q. Read them off.

A. The average yearly price in 1907 was $65.04. In 1908 it was $46.18. In 1909 it was $44.49. In 1910 it was $42.77. In 1911 it was $39.06.

Q. What is ferro-manganese used for?

A. It is used by steel makers.

Q. For what purposes?

A. I understand it is used for the purpose of restoring carbon, but I am not a practical man, and I do not, therefore, care to testify on that line.

Q. That is your information, however?

A. That is my information.

Q. Will you state how it is made?

A. It is made in a blast furnace, the same as pig iron, except that it is made with a very high temperature.

Q. Where does manganese ore come from?

A. From India, South America, Russia and other countries.

Q. Very little is mined in this country?

A. The production in this country in 1910 amounted to 2,258 tons. Those figures were furnished by the United States Geological Survey, and are printed in their reports.

Q. What were the imports?

A. 242,348 tons.

Q. So that less than one per cent. of the manganese ore was mined in this country; less than one per cent. of that which was used?

A. Yes.

Q. In making ferro-manganese, as an economical proposition, can it be made in the same furnace that is used for ordinary pig iron, intermittently?

A. Not intermittently. It could be made, but it could not be made economically. You must run your furnace at a very high temperature, and you would not want to cut it off after running on ferro, to run it on pig iron. As a matter of fact, the furnaces that make a specialty of ferro produce very little, if any, pig iron.

Q. Do you know, from the reports made to you, what furnaces of the United States Steel Corporation are used to manufacture ferro-manganese?

A. Yes; the Lucy at Pittsburgh; the Isabella at times; the Edgar Thomson at times; and the South Works at Illinois.

Q. And the furnaces that are used for that are run for months at a time, are they not, on ferro-manganese?

A. So I understand. They report very little pig iron to us, and they report they have been in continuous operation. In their reports to us they give the number of days that they have operated during the six months. We collect the information semi-annually, and you will find there that their operation, as a rule, has been continuous.

Q. As a matter of fact, Mr. Gray, the quantity of ferro-manganese that is used, as compared with the output of a steel plant, is very small, is it not?

A. Yes.

Q. Do you happen to remember how many pounds per ton of steel are ordinarily used?

A. I understand about 30.

Q. So that unless a plant or a series of plants are being operated on a very large scale, it is ordinarily bought rather than made, is it not?

A. The Cambria Steel Company, years ago, made some; and the Tennessee Coal, Iron & Railroad Company made some; but they did not continue it for a very long period.

Q. They found it more economical to buy it?

A. They found it more economical to buy it.

MR. COLTON: I object to the statement as to why these companies discontinued the manufacture of ferro-manganese, on the ground that the witness has not been shown to know.

By MR. SEVERANCE:

Q. Is it not a fact that in some years the Steel Corporation has imported ferro-manganese?

A. I have seen the statement. I do not know that positively.

Q. You do not know that?

A. I have seen the statement made in the trade papers, and also statements in the trade papers that they have purchased ferro-manganese, and the price given.

MR. COLTON: I object to that as hearsay.

By MR. SEVERANCE:

Q. Mr. Gray, are iron castings and malleable castings in the market in competition with steel castings?

A. Yes.

Q. What class of castings?

A. Railroad work, couplings; malleable castings have been used very largely for couplings.

Q. Also for fish plates and tie plates, have they not?

A. Yes; but a good many tie plates are rolled, today.

Q. I say, malleable ones have been used?

A. Oh, yes.

Q. And also steel?

A. Yes.

Q. How about iron pipe? Is not that sold in competition with steel pipe?

A. Wrought; yes. You see, there are two kinds—cast and wrought.

Q. And cast pipe, also?

A. No, not very much. I do not think you will find much competition from cast iron pipe. That is, there is no cast pipe of any consequence made, I should say.

Q. Is it not a fact that cast iron pipe is used for the same purposes as steel pipe?

A. Yes. There is considerable steel pipe riveted, you understand; but there was only one plant that I knew of that ever made cast steel pipe. That was at Chester, I think.

Q. That was not the question. The question is whether cast iron pipe is not used and is not sold in the market in competition with steel pipe.

A. It is.

Q. And large quantities of it are so sold?

A. Yes.

Q. From what kind of iron is that made?

MR. COLTON: I object to the examination of the witness

along this line, on the ground that he has not been qualified to testify in respect to the competition between iron and steel products.

By Mr. Severance:

Q. Proceed, Mr. Gray.

A. What do you mean by that?

Q. I think the tables here show that.

A. You mean the cast iron pipe?

Q. Yes.

A. Cast iron pipe is made from foundry and from low quality of forge; what they term a No. 3 forge.

Q. And these other iron commodities that are sold in competition with steel products are likewise made from foundry and forge iron, are they not?

A. Many of them are, yes.

Q. And also from malleable iron?

A. Yes.

Q. And those are the items that appear in the second subdivision of Exhibit 349 on the production of pig iron; that is, the forge, foundry and malleable, shown in these tables of production introduced in evidence, are the qualities of iron from which these products are made that are sold in competition with steel products?

A. That is right.

Q. One other question. Calling your attention to these exhibits as to the production of pig iron and the production of Ferro-Manganese by the Steel Corporation, I will ask you if that is equivalent to about the output of two ordinary blast furnaces.

A. I so understand.

Mr. Severance: That is all.

Mr. Colton: When you say "that" I understand it refers to Ferro-Manganese?

Mr. Severance: Yes.

Mr. Dickinson: You do not object to my asking some questions?

Mr. Severance: Not at all.

RE-DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Referring to what Mr. Colton said to you, as you have stated,—that he wanted facts, was that a general statement?

A. It was a general statement.

Q. That is, that he wanted nothing but the truth about the matters that he questioned you about? That was the idea was it?

A. Well, yes; to a certain extent.

MR. SEVERANCE: You do not mean when you say "to a certain extent" that he wanted anything but that?

THE WITNESS: No.

MR. DICKINSON: Not at all; but I want to let the witness say what he wants to say. Let him answer.

THE WITNESS: We were talking about the various percentages, and I said: "This statement does not show that the Corporation has increased, but does show that it has decreased its percentage, and will not help the Government's case very much." Mr. Colton said, then, that he was after the facts, whether it operated for or against the Government.

By MR. DICKINSON:

Q. Then you understand that, in regard to what he called for, he wanted anything that was responsive to his questions,—the truth the whole truth, and nothing but the truth?

A. Exactly.

Q. In the matters that he has called for in this table, did he call for anything based upon Government statistics? Did this table involve Government statistics?

A. No; he did not.

Q. Were they confined to the statistics that your Bureau, as a Bureau, had gathered?

A. Yes.

Q. Turning to this note that has been put in evidence by counsel for the other side, there is the following statement in it:

"Our understanding is that during the past five years it (referring to the Steel Corporation) consumed about 98 per cent of the quantity it made; but that prior to 1907 it sold

to other steel makers about fifteen per cent of its Ferro-Manganese output."

Did you have any statistics in your office which showed that the United States Steel Corporation, during the past five years, consumed about 98 per cent of the quantity it made?

A. We had that statement from the Corporation.

Q. When did you get that statement?

A. I presume about the time that this was compiled.

Q. About the time that this was compiled?

A. It may have been before; but my understanding—

Q. Was it among the statistics that you had gathered regularly in the preparation of the reports of your Bureau?

A. No; it was not.

Q. Did you have, among the statistics that had been gathered regularly for the reports of your Bureau, any statistics that showed that prior to 1907 the United States Steel Corporation sold to other steel makers about 15 per cent of its Ferro-Manganese output?

A. No; but I knew that it was a seller; I knew that sales were made about that time; I knew that, along in the years 1905 and 1906, the United States Steel Corporation sold Ferro-Manganese.

Q. Mr. Colton, however, called for certain tables based upon statistics, did he not?

A. Yes, sir.

Q. And you furnished those tables?

A. Yes, sir.

Q. This note, however, is based upon information outside of statistics that had been regularly gathered in the Bureau, is it not?

A. That is right.

MR. DICKINSON: Then we except to it—

THE WITNESS: That part of the note that you refer to.

MR. DICKINSON: That part of it. We except to this note because it is partly based upon information derived from sources other than statistics gathered in the usual course for the publication of the reports of the American Iron & Steel Association.

By Mr. Dickinson:

Q. Now I call your attention to a further statement:

"Owing to the increase in its own requirements, and to its inability to increase its output of Ferro-Manganese caused chiefly by the difficulty in securing an adequate supply of Manganese ore, practically all of which is imported, it has been able in late years to barely supply its own needs for this necessary alloy."

When you prepared this note, did you have in your Bureau any statistics gathered in the usual way for the purpose of making the usual reports of that association that the United States Steel Corporation was unable to increase its output of Ferro-Manganese?

A. I had no figures, but from conversation with various persons, one of whom, a personal friend of mine, had thought of going into the manufacture of Ferro-Manganese, and had looked into the matter very thoroughly, and was endeavoring to lease a furnace, I knew, from experience, that it was impossible for him to get the necessary ore to keep that furnace in continuous operation. I also knew, from trade reports, and from other sources, in conversation with people who had come into the office and talked in relation to the output of Ferro-Manganese, that it was almost an impossible thing to get a sufficient supply of ore to keep even one furnace going continuously.

Q. Your statement is, then, based on information derived from other sources than the statistics that Mr. Colton called for?

A. Yes, that is right: from various sources.

Q. You state further, "The reports of the United States Geological Survey show that in 1910 the output of Manganese ore in the United States amounted to but 2,258 gross tons, while the imports amounted to 242,348 tons."

Did Mr. Colton call for any tables based upon any statistics furnished by the United States Geological Survey?

A. No, sir. That is gratuitous on my part.

Q. When was this note prepared?

A. When did you receive these tables, Mr. Colton?

Mr. Colton: About a week ago, I think.

THE WITNESS: Then the note was prepared on the day preceding the receipt of the tables.

MR. SEVERANCE: You mean the day preceding the day Mr. Colton received the tables?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. If it was prepared wholly or partially from information derived from the United States Steel Corporation, when did you get that information?

A. I could not say. It was at various times. We had this information on file. I looked over our records, and wherever I found any information in relation to Ferro-Manganese, I incorporated it in this statement.

Q. In this note?

A. In this note. Some of this information was derived from the United States Steel Corporation and some from other sources.

Q. But I refer to whatever you did get from the United States Steel Corporation, which went in as a basis of this note; at what time did you get it?

A. It was, of course, prior to the writing of this note.

Q. About that time?

A. No; it was earlier; perhaps a week or ten days; may be before.

MR. DICKINSON: That is all on that matter.

MR. COLTON: I have a few questions, by way of the cross examination of this witness' knowledge as to the true method by which the Carnegie Company had come to manufacture approximately 100 per cent of the Ferro-Manganese in this country.

By MR. COLTON:

Q. I will ask you, Mr. Gray, as to whether you have any reason to believe any matters herein stated not to be as herein stated (reading from page 1108, printed Volume III of the Government Exhibits):

"At a Meeting of the Board of Managers of

THE CARNEGIE STEEL COMPANY, LIMITED,

held at the General Offices of the Association, Carnegie Building, Pittsburg, Pa., at 12:30 P. M., Tuesday, March 22, 1898, there were present MM. FRICK (Chairman), SCHWAB, CUREY, SINGER, PEACOCK, PHIPPS, CLEMSON, WICHTMAN and LOVEJOY (Secretary).

* * *

"The following communications were read:

"From David Evans to Millard Hunsiker, Assistant to President, dated Middlesborough, March 10th:

"'You will remember that early in January last we met in Birmingham, and you had an interview with the Members of the English Ferro-Manganese Association. After that Meeting you were told that after further consideration a communication might be made to you in the nature of a proposal for the American Ferro Makers to consider. On behalf of the English Makers I am now in a position to make you a proposal for controlling the Ferro trade as between the English and American Makers. The English Makers are not able to exclude themselves altogether from the American Market, but they are willing to allow you to control that Market in the sense of fixing the price for consumption in your country; and the English Makers will undertake to limit their sales in America at the American prices to a maximum of 15,000 tons per year. On the other hand, the American makers will be at liberty to sell in Europe other than England, a similar quantity. In the European Market we of course will fix the price, and below which you will not be at liberty to sell. It is proposed to make the arrangement for say to the end of the present year, and subject to three months' notice from September. It is assumed that your firm will practically be able to control all American Makers of Ferro, but if, for any reason, other makers appeared who could not be controlled, the situation would require to be reconsidered and modified to suit existing circumstances. I

may say in passing that it has taken a little trouble to arrive at the point where we now are, and I hope you will be able to conclude the negotiations on the lines now indicated.' "

"From Millard Hunsiker, Assistant to President, to the President, dated London, March 12th:—"

MR. SEVERANCE: What year?

MR. COLTON: It is cited as a part of this same year.

MR. SEVERANCE: What year is it?

MR. COLTON: March 22, 1898.

MR. SEVERANCE: 15 years ago.

MR. COLTON: (Continuing reading):

" 'I send you herewith a copy of David Evans' letter of the 10th inst., in regard to Ferro-Manganese. Kindly advise me of the action I shall take in regard to this.

" 'I am rather surprised and sorry that we have not received a better proposition; in fact I was led to believe that a more favorable one would be received; but, considering the fact that we have now entirely stopped selling Ferro-Manganese, it seems to me that any arrangement made for maintaining prices would be of advantage to us.

" 'If you are inclined to give their proposed arrangement a trial, what price do you want to fix for American Ferro?' "

"MR. SCHWAB: 'At first I was inclined to think it would be unadvisable to make this arrangement, but, after discussing it with Mr. Curry, I look at it a little differently. If we make the same prices, the effect will be that we will make all the sales in this Country, and the English makers will take the foreign business.'

"MR. CURRY: 'I think that would be the effect, and as the arrangement can be terminated at the end of three months' notice, I think we had better try it. We should have a little more definite understanding, however, as to what we shall do in case other Makers come into the market.'

"MR. FRICK: 'It seems to me it is a good thing because it puts us in touch with the Foreign Makers, and paves the way for amicable action hereafter. That would be an advantage as we cannot continue to do business, at arms' length.'

"On motion (Curry and Peacock), the arrangement proposed was authorized, the details and arrangement being left in the hands of the President; the vote being unanimous."

Do you have any reason to suppose that arrangement was not entered into?

A. I never heard of it before.

MR. SEVERANCE: I object to that. Counsel knows it is incompetent and immaterial, and a wholly improper way to examine the witness. I move to strike out all that was read in connection with this question to the witness.

By MR. COLTON:

Q. Do you know, Mr. Gray, as a matter of fact, that the reason the Cambria Company ceased to manufacture ferro-manganese was that it entered into an arrangement with the Carnegie Company whereby it got a percentage for so doing?

A. I do not.

Q. Do you know as to why the Tennessee Coal, Iron & Railroad Company ceased to manufacture ferro-manganese?

A. I do not. I always understood that they made such poor stuff that they gave it up.

Q. But you do not know?

A. I do not know; but that was the common report.

Q. As to the other companies not making it, or how the Carnegie Company got its almost complete control before the United States Steel Corporation, you know nothing?

A. As a matter of fact, the Cambria did not cease to make it. The Cambria Company made ferro-manganese in 1903.

Q. Do you know what arrangement existed between the Carnegie Company and the Cambria Company in respect to how much the Cambria Company should make?

A. I never heard of any.

Q. Did you know anything in reference to a division of profits between those companies in respect to the manufacture of ferro-manganese?

A. No, sir.

Q. Do you know anything about that, of your own knowledge?

MR. SEVERANCE: He has said three times that he never heard of it. How many more times do you want him to say it?

THE WITNESS: This is the first time I ever heard this statement.

MR. COLTON: That is all.

By MR. SEVERANCE:

Q. I have just one or two questions. From what countries is ferro-manganese imported?

A. From Great Britain, Germany, perhaps France and one or two other countries. I can prepare a statement giving you the Government importations, if you so desire.

Q. I wish you would. I should like to have that prepared.

A. I had partly prepared it before leaving the office.

Q. The importations of ferro-manganese largely exceed in tonnage the amount that is manufactured here by the United States Steel Corporation, do they not?

A. They annually exceed it.

Q. As shown by the exhibit which has been introduced here in evidence, taken from the Government's records?

A. Year by year you will find that the importations are larger than the production.

Q. In some years it is over double, is it not?

A. Yes, I think so.

MR. SEVERANCE: That is all.

MR. COLTON: That is all. We are very much obliged to you, Mr. Gray.

THE WITNESS: Thank you. I will prepare these other statements.

(Whereupon, at 5:20 o'clock p. m. an adjournment was taken until tomorrow January 30, 1913, at 2:00 o'clock p. m.)

FORTY-THIRD DAY.

EMPIRE BUILDING, 71 Broadway,
New York City.

THURSDAY, JANUARY 30,1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. BOLLING and MR. REED.

FREDERICK STRAUSS,

a witness called on behalf of the United States, having been previously sworn, testified further as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Strauss, please examine this agreement, which begins on page 351, of Volume 1, Government Exhibits, and state whether you identify it.

A. You do not want me to compare that word for word?

Q. No, just in a general way.

A. Yes, sir.

Q. Please turn to page 352 and examine the first article there and the reference to an agreement of January 5, 1899.

A. Yes, sir; I have read that.

Q. Please examine this paper which was sent to us by you and state whether or not that is a copy of that agreement. (Handing witness paper).

A. I believe it to be.

Q. Where have you had this paper?

A. That paper was lying in a tin box in the office of J. & W. Seligman & Co., my firm, that tin box being labeled "American Steel and Wire Company papers."

Q. Was that the paper that was in the file of Seligman & Co. in regard to——

A. (Interposing). It was in that tin box that I have just referred to; yes, sir.

MR. DICKINSON: I now offer the paper in evidence.

MR. BOLLING: Defendant objects to the introduction of the document in evidence, on the ground that it is incompetent, irrelevant and not sufficiently proved to be a copy of the original.

(The paper referred to was thereupon marked Government Exhibit No. 359, January 30, 1913.)

By MR. DICKINSON:

Q. Do you know where the original is?

A. I do not.

Q. At the time did you see the original in the course of the business that was transacted?

A. I have seen the original, I think.

Q. You have seen the original?

A. Yes, sir; I think so.

Q. And to the best of your belief that is a copy?

A. Yes, sir.

Q. And it was kept in the files of your firm as a copy, was it?

A. Well—

Q. (Interposing). Did you have the original?

A. No.

Q. You haven't the original now?

A. No.

Q. Do you know where it is?

A. No; I have no idea; I do not know; it is possible that it is in the hands of Mr. Guthrie's firm—Seward, Guthrie & Steele—who were counsel in that whole matter; but that is a mere inference on my part; I do not know where else it could be unless it is among Mr. Voorhees' papers, or Mr. Ellwood's papers. This paper purporting to be a copy of an agreement dated the fifth day of January, 1899, between John W. Gates and Isaac L. Ellwood, of the City of Chicago, parties of the first part, and Frederick P. Voorhees of the

City of New York, party of the second part, was found among our records and is the only paper that would answer the description of the document referred to on page 352 of the Government Exhibits, Volume I, and I have every reason to believe that it is a correct copy of the original. I cannot, either from recollection or otherwise, swear to that as a positive fact; but I should have every reason and, as I have just said, I have every reason to believe it is a copy of the paper in question. In a business way I should be quite willing to act upon it as being such.

MR. BOLLING: I will add to my objection, that the failure of counsel for the Government to produce the original has not been sufficiently explained.

By MR. DICKINSON:

Q. You were also requested to produce the notice of January 7, 1899, by J. W. Gates, A. Clifford, I. L. Ellwood, and others, to the stockholders of the American Steel & Wire Company. Please examine the paper that I now show you and state whether or not that is such notice.

A. That is the notice; yes, sir.

MR. DICKINSON: We offer that in evidence.

MR. BOLLING: Defendant objects on the grounds of incompetency and immateriality; not as to its authenticity.

(The paper referred to was thereupon marked Government Exhibit No. 360, January 30, 1913.)

By MR. DICKINSON:

Q. This is a printed notice that they sent out?

A. Yes, sir.

Q. Is this identical with those sent out?

A. This is one of the printed notices that were sent out, in the form in which they were sent out.

Q. You were asked to produce a notice of January 7, 1899, by J. & W. Seligman & Company to the holders of the preferred and common stock of the American Steel & Wire Company. I will ask you whether that notice was published for the purpose of bringing it to the attention of such stockholders.

A. It was.

Q. Please examine this paper and state whether that is the published notice.

A. Yes, sir; it is.

Q. What was that published in; do you know?

A. It was published generally; I do not know what paper this was from.

Q. But that was one of the notices published by your firm in one of the newspapers for the purpose of bringing it to the attention of the stockholders?

A. Yes, sir.

MR. DICKINSON: I will offer that in evidence.

MR. BOLLING: Defendant objects on the grounds of incompetency and immateriality.

(The paper referred to was thereupon marked Government Exhibit No. 361, January 30, 1913.)

SAMUEL J. BAILEY,

a witness called on behalf of the United States, having been previously sworn, testified further as follows:

RE-DIRECT EXAMINATION.

By MR. COLTON:

Q. Mr. Bailey, I show you a document dated May 11, 1909, addressed to H. O. Phillips, Esq., Phillips Insulated Wire Company, Pawtucket, R. I., and purporting to be signed by E. E. Jackson, Jr. Do you know that signature?

A. Yes, sir.

Q. Whose signature is that?

A. It is the signature of E. E. Jackson, Jr.

MR. COLTON: I offer in evidence the letter of May 11, 1909, signed by E. E. Jackson, Jr., as identified by the witness.

MR. BOLLING: Defendant objects on the grounds of immaterialty, irrelevancy, incompetency, and because the document in question attempts to introduce testimony which is purely hearsay.

By MR. COLTON:

Q. State whether or not this is the E. E. Jackson who was in the various wire associations?

A. He was; yes, sir.

MR. BOLLING: Add to the defendants' objections that the letter does not purport to be written by or addressed to any of the parties in the present action.

(The letter referred to was thereupon marked Government Exhibit No. 362, January 30, 1913.)

By MR. COLTON:

Q. Mr. Bailey, have you any of the correspondence, minutes or rules of the Horseshoe Association concerning which you testified?

A. No, sir.

Q. Do you know where those can be obtained?

A. No, sir.

(Whereupon, a recess was taken until two o'clock.)

AFTER RECESS,

At the expiration of the recess the hearing was resumed.

L. V. HUBBARD,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. COLTON:

Q. What is your business?

A. Lawyer.

Q. How long have you been a lawyer?

A. About twelve years.

Q. Were you ever associated with the firm of Noble, Jackson & Hubbard, counsellors at law, 52 William Street, New York?

A. Yes.

Q. Did you know in a general way of the wire and horseshoe association that was carried on by Mr. Jackson?

A. Yes, sir.

MR. COLTON: You are not objecting to the questions because I am leading?

MR. REED: No, I do not object on that ground, but I would like to ask the witness a question.

By MR. REED:

Q. Was this knowledge acquired in a professional capacity?

MR. COLTON: Just a moment. I object to that question.

MR. REED: I withdraw the question.

By MR. COLTON:

Q. The head of the horseshoe association was E. E. Jackson, Jr.?

A. He was the supervisor, so-called.

Q. And the most active man in the association was Samuel Bailey?

A. Samuel J. Bailey, yes.

Q. And you only knew of the horseshoe association in a general way?

A. That is all.

Q. You would not be positive that no correspondence passed between you and members of the association, however?

A. I could not at this time; no, sir.

Q. Do you know where E. E. Jackson is?

A. In Europe.

Q. Do you know where the business papers of E. E. Jackson are, relating to this association, kept by him?

A. No, sir; I do not.

Q. Do you know what became of the papers that were kept by him?

A. I do not.

Q. What is your best opinion as to whether those papers are still in existence?

MR. REED: Objected to as not a matter of opinion.

MR. COLTON: Will you answer?

THE WITNESS: My best opinion is that they were destroyed long ago.

By MR. COLTON:

Q. What is your best judgment?

MR. REED: Objected to because it is not a matter of judgment.

THE WITNESS: It is my judgment that they were destroyed long ago.

By MR. COLTON:

Q. What grounds have you for being either of the opinion or having the judgment that the papers in question were destroyed long ago?

A. The practice of the office, when we got through with things, to clean them up.

Q. You were familiar with the practice in your office?

A. Yes.

Q. And that would include the destruction of the horseshoe agreement and the horseshoe minutes?

A. It might; yes. It was the practice to get rid of things when we were through with them, and not keep them.

Q. Do you know of any party that could give us better information in reference to this horseshoe association than Samuel J. Bailey?

A. I do not; no, sir.

Q. He is the man most familiar with it?

A. Yes.

MR. COLTON: That is all.

MR. REED: No cross examination.

MR. COLTON: I have a number of exhibits that I wish to offer in evidence.

I produce a pamphlet entitled "Preliminary Report to the Stockholders of the United States Steel Corporation, to be submitted at the first annual meeting, 17th February, 1902," together with by-laws of the United States Steel Cor-

poration as amended to January 7, 1902; and ask to have said pamphlet and by laws marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 363 for identification.)

MR. COLTON: I offer in evidence, from said by-laws thus produced, Article 3, page 16 of said pamphlet, beginning with the words "Article 3, executive committee and finance committee" through the words on page 18: "No director shall become a salaried employee of the company except by special vote of the finance committee."

MR. REED: We object to the offer of a part without the offer of the balance of the by-laws.

(The portion of the by-laws just referred to was thereupon marked Government Exhibit No. 363, January 30, 1913.)

MR. COLTON: The Government produces a pamphlet entitled "Department of the Interior, United States Geological Survey, George Otis Smith, Director; The Production of Iron Ore, Pig Iron and Steel in 1911, by Ernest F. Burchard; Advance Chapters from Mineral Resources of the United States, calendar year 1911. Washington, Government Printing Office, 1912;" and ask to have said pamphlet marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 364, for identification.)

MR. COLTON: From said pamphlet marked for identification the Government offers in evidence the following:

Page 6: The table entitled "Production of iron ore in the United States by geographic districts in 1909, 1910 and 1911, in long tons," through the words "b. Pacific Slope included in Rocky Mountain District."

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet.

We object to it further because it appears by the pamphlet, if this is a correct copy, that it was published by the government after suit had been brought in this case.

We object to it further because it is hearsay and therefore incompetent.

MR. COLTON: Also from page 7: Table entitled "Rank of

iron ore producing states in 1910 and 1911, with quantity and value of product and percentage of each," down to the end of that table.

MR. REED: We make the same objection.

MR. COLTON: Also from pages 8 and 9 the following: The table entitled "Production of iron ore in the United States in 1910 and 1911 by states and varieties in long tons," through the words on page 9: "e. California, Colorado, Connecticut, Massachusetts, Mississippi, New Mexico and Wyoming."

MR. REED: We make the same objection.

MR. COLTON: Also from pages 9 and 10 the table entitled "Production of iron ore in the United States by mining districts and varieties in 1910 and 1911 in long tons," through the words on page 10: "a. Brown ore is included in magnetite."

MR. REED: We make the same objection.

MR. COLTON: From page 14, beginning with the words "Apparent iron ore consumption," through the words on page 15: "In 1909 and 1911 figures represent sales" said table being entitled "Apparent consumption of iron ore in the United States, 1889 to 1911, in long tons."

MR. REED: We make the same objection.

MR. COLTON: From page 17, the table entitled "Production of Lake Superior iron ore, 1854 to 1911 by ranges in long tons," said table ending with the note: "a. Shipments."

MR. REED: We make the same objection.

MR. COLTON: Also from page 17, beginning with the words "Shipments of Lake Superior iron ore, 1906 to 1911, in long tons," through the note: "a. Iron Trade Review."

MR. REED: We make the same objection.

MR. COLTON: From page 18, beginning with the words "Iron ore receipts at Lake Erie ports, 1906 to 1911, in long tons," through the note: "a. Iron Trade Review."

MR. REED: We make the same objection.

MR. COLTON: From page 20, beginning with the words "Foreign trade in iron ore, imports," through the words: "other countries in 1910, Chinese Empire, Colombia, Egypt, British South Africa, and so forth."

MR. REED: We make the same objection.

MR. COLTON: From page 23: "Iron ore industry of Cuba," through the note at the close of the table: "c. Of this quantity 12,691 tons were sent to foreign ports."

MR. REED: We make the same objection.

(The portions of the pamphlet above referred to were thereupon marked Government Exhibit No. 364-a to Government Exhibit No. 364-j, inclusive, January 30, 1913.)

MR. COLTON: I produce pamphlet entitled "Department of the Interior U. S. Geological Survey, George Otis Smith, Director. The production of iron ore, pig iron and steel in 1909. By Ernest F. Burchard. Advance Chapter from Mineral Resources of the United States, calendar year 1909. Washington, Government Printing Office, 1911," and I ask that said document be marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 365 for identification.)

MR. COLTON: I offer in evidence from page 8 of said pamphlet the table entitled "Production of iron ore in the United States, 1908 and 1909, by states and varieties in long tons," through the words: "a. Brown ore is included in magnetite."

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet. We object to it further because it is hearsay and therefore incompetent.

MR. COLTON: We offer also from page 9 the table entitled "Production of iron ore in the United States by mining districts and varieties in 1909 in long tons," through the words. "b. Brown ore is included in magnetite."

MR. REED: We make the same objection.

(The portions of the pamphlet above referred to were thereupon marked Government Exhibit No. 365-a and Government Exhibit No. 365-b, January 30, 1913.)

MR. COLTON: The Government produces a pamphlet entitled "Department of the Interior—U. S. Geological Survey, George Otis Smith, Director, the production of iron ores, pig iron and steel in 1908, by E. C. Harder, with a note on the value of pig iron in 1908, by W. T. Thom. Advance Chapter from Mineral Resources of the United States, cal-

endar year 1908, Washington, Government Printing Office, 1909," and we ask that said pamphlet be marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 366 for identification.)

MR. COLTON: We offer in evidence from page 8 of said pamphlet the table entitled "Production of iron ore in the United States by commercial districts in 1906, 1907 and 1908 in long tons," through the words: "included in Rocky Mountain District."

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet. We object to it further because it is hearsay and therefore incompetent.

MR. COLTON: We also offer from page 11 of said pamphlet the table entitled "Production of iron ore in the United States by mining districts and varieties in 1908 in long tons," through the note: "c. Brown ore is included in magnetite."

MR. REED: We make the same objection.

(The portions of the pamphlet above referred to were thereupon marked Government Exhibit No. 366-a and Government Exhibit No. 366-b, January 30, 1913.)

MR. COLTON: The Government produces a pamphlet entitled "Department of the Interior—U. S. Geological Survey, George Otis Smith, Director. The production of iron ores, pig iron and steel in 1907, by Edwin C. Eckel, with a note on the value of pig iron in 1907, by W. T. Thom. Advance Chapter from Mineral Resources of the United States, calendar year 1907. Washington, Government Printing Office, 1908," and we ask that the same be marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 367, for identification.)

MR. COLTON: We offer in evidence from page 10 of said pamphlet "Production of iron ore in the United States in 1906 and 1907, by states and varieties in long tons," through the note: "f. Includes California."

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet. We object to it further because it is hearsay and therefore incompetent.

MR. COLTON: We also offer from page 15 the table entitled "Production of iron ore and pig iron in the United States, 1889 to 1907, in long tons," through the words "a. From annual reports of the American Iron and Steel Association."

MR. REED: We make the same objection.

MR. COLTON: We also offer from page 33 beginning with the word "Imports," through the words: "a. Newfoundland only," including therein a table headed "Quantity and value of iron ores imported into the United States, 1904-1907 by countries, in long tons."

MR. REED: We make the same objection.

(The portions of the pamphlet above referred to were thereupon marked Government Exhibit No. 367-a to Government Exhibit No. 367-e, inclusive, January 30, 1913.)

MR. COLTON: The Government produces a pamphlet entitled "Department of the Interior—U. S. Geological Survey, Charles D. Walcott, Director. The production of iron ores in 1905, by John Birkinbine; Advance Chapter from Mineral Resources of the United States, calendar year 1905: David T. Day, Chief of Division of Mining and Mineral Resources. Washington, Government Printing Office, 1906," and we ask that that be marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 368, for identification.)

MR. COLTON: We offer in evidence from page 8 of said pamphlet the table entitled "Production of iron ores in the United States in 1905 by states and varieties," through the figures 42,526,133.

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet. We object to it further because it is hearsay and therefore incompetent.

MR. COLTON: We also offer from page 29 of said pamphlet the table entitled "Lake shipments of iron ore, 1900-1905," through the figures "34,241,498."

MR. REED: We make the same objection.

MR. COLTON: We also offer from page 29 the table entitled "Iron ore receipts at Lake Erie ports, 1900-1905," through the figures "28,941,259."

MR. REED: We make the same objection.

MR. COLTON: We also offer from page 31 the table entitled "Stocks of iron ore at lower lake ports, December 1, 1900-1905," through the figures "6,758,511."

MR. REED: We make the same objection.

MR. COLTON: We also offer from page 31 the table entitled "Stocks of iron ore at lower lake ports, May 1, 1901-1906," through the figures "1,791,990."

MR. REED: We make the same objection.

(The portions of the pamphlet above referred to were thereupon marked Government Exhibit No. 368-a to Government Exhibit No. 368-e, inclusive, January 30, 1913.)

MR. COLTON: The Government produces a pamphlet entitled "Department of the Interior—U. S. Geological Survey, Charles D. Walcott, Director; statistics of the American iron trade for 1904, by James M. Swank; Extract from Mineral Resources of the United States, calendar year 1904: David T. Day, Chief of Division of Mining and Mineral Resources. Washington, Government Printing Office, 1905," and we ask that said pamphlet be marked for identification.

(The pamphlet referred to was thereupon marked Government Exhibit No. 369 for identification.)

MR. COLTON: We offer in evidence from page 12 of said pamphlet the table entitled "Shipments of iron ore from leading districts," through the words "Barraboo District in 1904."

MR. REED: We object to the offer of parts of this pamphlet without the offer of the entire pamphlet. We object to it further because it is hearsay and therefore incompetent.

(The portion of the pamphlet above referred to was thereupon marked Government Exhibit No. 369. January 30, 1913.)

MR. COLTON: That concludes my offer.

(Whereupon, at 3:00 o'clock p. m. an adjournment was taken to a date to be agreed upon by counsel.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1[redacted] [redacted] 1919

No. [redacted] 1[redacted] 6

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

VOLUME 9.

PLAINTIFF'S TESTIMONY.

FILED MAY 12, 1916.

(25292)

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Agreement of December 31, 1898, between Herman Belmer and others, on the one hand, and J. W. Gates and others, on the other hand;

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FORTY-FOURTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City.

Friday, February 28, 1913.

Before Special Examiner HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the Defendants, MR. LINDABURY, MR. SEVERANCE, MR. BOLLING and MR. REED.

STIPULATION.

MR. COLTON: It is agreed, subject to the objection of the defendants that the same is incompetent and immaterial, that Mr. William G. Gray, heretofore produced as a witness on behalf of the petitioner, would, if recalled, testify as follows, relative to certain matters gone into in part by him upon his examination:

"Upon going over carefully the statements for rolled iron and steel for 1907 I find that the copy sent to you was all right as it stood; the figures for the Tennessee Company are included in the production of the independent companies for 1907; but for 1908 and for all subsequent years they are included with the production of the United States Steel Corporation."

The Government asks to have marked for identification a paper, entitled "Production of foundry pig iron in the United States from 1901 to 1910 inclusive. Also ferro-silicon from 1903 to 1910, inclusive. Compiled by the Bureau of Statistics of the American Iron and Steel Institute from reports made to the American Iron and Steel Association"; it being agreed between counsel that this table was prepared by this witness, William G. Gray, from the same sources as other tables introduced in evidence by the Petitioner.

(The paper was thereupon marked for identification Government Exhibit No. 370.)

MR. COLTON: I offer the paper in evidence.

MR. SEVERANCE: And the same is objected to on the same grounds as other tables similarly prepared by Mr. Gray and offered in evidence.

(The paper was received in evidence and thereupon marked Government Exhibit No. 370, February 28, 1913.)

MR. COLTON: I also ask to have marked for identification another paper, entitled "Production of pig iron by grades by the Tennessee Coal, Iron and Railroad Company in 1907, as reported to the American Iron and Steel Association. Compiled by the Bureau of Statistics of The American Iron and Steel Institute, No. 261 South Fourth Street, Philadelphia."

(The paper was thereupon marked Government Exhibit No. 371 for identification.)

MR. COLTON: I offer said table in evidence, it being agreed by counsel that this table was prepared in the same manner and from the same sources as preceding exhibits.

MR. SEVERANCE: The same is objected to on the same grounds as to other tables heretofore offered, prepared by Mr. Gray.

(The table was received in evidence and thereupon marked Government Exhibit No. 371, February 28, 1913.)

MR. COLTON: I ask to have marked for identification a table, entitled "Production of rolled iron and steel by the Tennessee Coal, Iron, and Railroad Company in 1907. Compiled by the Bureau of Statistics of the American Iron and Steel Institute, No. 261 South Fourth St., Philadelphia, from statistics collected by the American Iron and Steel Association"; it being agreed by counsel that said exhibit was prepared in the same manner and from the same sources as preceding exhibits.

(The paper was thereupon marked Government Exhibit No. 372 for identification.)

MR. COLTON: I offer said Exhibit No. 372 for identification in evidence.

MR. SEVERANCE: The same objection as to preceding exhibits.

(The table was received in evidence and thereupon marked Government Exhibit No. 372, February 28, 1913.)

JAMES GAYLEY,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Dickinson:

Q. What is your age, Mr. Gayley?

A. Fifty-seven.

Q. Where do you live?

A. New York City.

Q. Have you any connection, now, with the United States Steel Corporation or any of its subsidiaries?

A. None whatever.

Q. Are you a stockholder in either of them?

A. Yes; I am a stockholder.

Q. In which ones of them?

A. In the Corporation.

Q. In the United States Steel Corporation?

A. Yes.

Q. Have you been a stockholder in that corporation ever since its organization?

A. Yes.

Q. Did you acquire stock in the organization?

A. Through the Carnegie Steel Company.

Q. Were you one of the underwriters of the United States Steel Corporation?

A. To a very small extent.

Q. Did you get stock in the United States Steel Corporation for your stock in the Carnegie Company?

A. I did.

Q. Were you an officer of the United States Steel Corporation; and if so, what position did you hold, and during what period?

A. I was first vice-president from the beginning of the Steel Corporation until January 1, 1909.

Q. That was the only office you held with the Corporation, was it?

A. That is the only office I held.

Q. Mr. Gayley, when did you first become acquainted with the Lake Superior ore district?

A. When?

Q. Yes. At what period?

A. In 1888.

Q. What was your familiarity with that district during the period from 1895 to 1901?

A. I made frequent visits up there every year.

Q. To what parts?

A. Over all the ranges of the Lake Superior district.

Q. Did that include Minnesota, Michigan and Wisconsin?

A. Yes.

Q. What ranges are there in Wisconsin?

A. That is simply a continuation of the Gogebic range, which crosses the Montreal River at that point.

Q. Where is the Gogebic principally located?

A. At Ironwood, Michigan.

Q. Is there a river there called the Iron River?

A. No, sir.

Q. What is the Iron River region?

A. The Iron River region is in the Menominee district.

Q. And that is in Michigan?

A. That is in Michigan.

Q. The Marquette, Menominee and Gogebic are in Michigan?

A. Yes.

Q. Except that part of the Gogebic which extends into Wisconsin?

A. Yes.

Q. And the Vermilion and Mesabi are in Minnesota?

A. That is correct.

Q. State, Mr. Gayley, whether or not you were actively connected with the ore end of the business of the Carnegie Company from 1895 up to the time that that company was taken over by the United States Steel Corporation.

A. I was.

Q. Were you a director in the Oliver Mining Company or Iron Mining Company?

A. I was.

Q. What was the name of that company?

A. It was the Oliver Iron Mining Company.

Q. Was that the constant name? Was that always the name of the company?

A. It started first as the Oliver Mining Company, and then it was changed to the Oliver Iron Mining Company.

Q. Do you remember about the time that change was made? I am a little confused about that myself.

A. I think that change was made about 1896. That is the best of my recollection.

Q. Were you an officer or director in that company?

A. I was.

Q. About what time did you become an officer?

A. About 1896.

Q. Were you both an officer and a director, or merely a director?

A. I was assistant treasurer and a director.

Q. How long did you continue your connection with the Oliver Iron Mining Company?

A. Until it was merged into the Steel Corporation.

Q. Did your directorship then cease?

A. It ceased.

Q. Mr. Gayley, did you attend the meetings at any time of the board of managers of the Carnegie Steel Company from time to time?

A. I did.

Q. In what capacity were you there?

A. When I left the works and went into the general business of the Carnegie Steel Company in 1896, for several years afterwards the directors had the privilege of nominating an alternate to attend meetings of the board in their absence. I was the alternate for Mr. Curry, who was then in poor health.

Q. And as such you attended those meetings?

A. And as such I attended those meetings; but had no vote.

Q. Did you become a director of the Carnegie Steel Company after that?

A. Later.

Q. Were you a director of that company at the time it was taken over by the United States Steel Corporation?

A. I was.

Q. Were you an officer of that company also?

A. No, sir.

Q. What were Mr. Curry's initials?

A. H. M.

Q. Was Mr. Curry, at any time during his connection with the Carnegie Steel Company, interested in ore properties in the Lake Superior region?

A. Do you mean personally?

Q. Yes.

A. Not that I know of.

Q. Or as a stockholder in any company?

A. Personally?

Q. Yes, was he personally?

A. No, sir.

Q. Was he an officer or director in any company that was dealing with ore?

A. He was a director in the Pewabic.

Q. How about the Oliver Iron Mining Company?

A. In the Pewabic and the Oliver Iron Mining Company.

Q. Was that as representing the Carnegie interests?

A. Yes.

Q. Where was the Aurora Mine?

A. I think that was on the Gogebic Range.

Q. Was that acquired by the Oliver Iron Mining Company?

A. I think it was; there are so many mines up in that country that I cannot just definitely locate any of them.

Q. You are not positive as to that?

A. I am not positive.

Q. How about the Norrie; where is that located?

A. At Ironwood, Michigan; it is on the Gogebic Range.

Q. Was that acquired by the Oliver Iron Mining Company?

A. Yes.

Q. About what time?

A. Either 1896 or 1897.

Q. Who were the people that owned or controlled the Norrie?

A. The Metropolitan Iron Lands Company.

Q. Who were the people in that?

A. The controlling element or the controlling spirit in that was Theodore Davis of Newport and Egypt.

Q. What kind of mine was the Norrie as to extent of output and quality?

A. The Norrie mine was considered one of the best mines in Michigan; it was a large producer; its quality was equal to that of any.

Q. At what time was that acquired by the Oliver Company? Have you stated that?

A. I have—in 1896 or 1897; I have forgotten which.

Q. Before it was acquired, where was the ore of the Norrie Mine sold?

A. At various places; sometimes to the Carnegie Steel Company, sometimes to the Illinois Steel Company, and some years we would get none of it.

Q. Was it sold generally in interstate commerce?

A. It was generally merchanted.

Q. And to be used in places other than the State of Michigan, was it?

A. It was.

Q. How about the Zenith Mine, where was that?

A. On the Vermilion Range.

Q. Was that acquired by the Oliver Iron Mining Company?

A. They acquired a lease of it.

Q. At what time?

A. As near as I can approximate, about 1898 or 1899.

Q. How long was that lease?

A. I cannot recall.

Q. What kind of mine was that as to quality of ore and extent of output?

A. It was a good quality of ore.

Q. Was it Bessemer or non-Bessemer or both?

A. Bessemer, predominating in Bessemer.

Q. What people controlled that mine before it was acquired by the Oliver Iron Mining Company?

A. I cannot recall now.

Q. State whether or not the ore in that mine had been

sold previous to its acquisition by the Oliver Iron Mining Company, generally in interstate commerce.

A. So far as I know it had.

Q. Where was the Pioneer Mine?

A. On the Vermilion Range, adjoining the Zenith.

Q. What was the character of that mine as to quality of ore?

A. The ore was rich.

Q. How about the extent of output?

A. A large deposit.

Q. State whether or not it was the greatest known body of ore, other than the Mesabi outside of the Norrie and Tilden Mines, which had been acquired by the Carnegie Steel Company.

A. I would say that it was.

Q. Now, prior to the acquirement of that property by the Oliver Iron Mining Company, where was its ore sold?

A. It was sold principally to the Illinois Steel Company.

Q. Located where?

A. At Chicago.

Q. Did the Carnegie people ever buy any of it?

A. Some years they did.

Q. When was that acquired by the Oliver Iron Mining Company?

A. That was about 1898.

Q. Where was the Chandler Mine?

A. The Chandler Mine adjoined the Pioneer on the West.

Q. What was the character of that ore?

A. It was very good, what there was of it.

Q. What was the extent of the output?

A. It was nearly worked out.

Q. Was that acquired by the Oliver Iron Mining Company?

A. No, sir.

Q. Was it acquired by the Carnegie?

A. No, it came in with the Federal Steel Company's ore properties into the Corporation.

Q. It was acquired by the Federal?

A. It was owned by the Federal, by the Minnesota Iron Company, which was owned in turn by the Federal.

Q. Before that was acquired by the Minnesota Iron

Company, state where the ore of the Chandler Mine was sold?

A. Generally.

Q. Generally in interstate commerce?

A. Yes.

Q. Where was the Genoa?

MR. LINDABURY: You have not asked when the Minnesota Iron Company acquired it.

MR. DICKINSON: I will ask it.

By MR. DICKINSON:

Q. When did the Minesota Iron Company acquire it? Do you know?

A. They acquired it, to the best of my knowledge, when they opened the Vermilion Range and built that Iron Range Road up there. That was the inducement, or a part of the inducement, to build the road up there.

Q. About what time?

A. That was early in the eighties.

Q. I asked you about the Genoa Iron Mining Company.

A. There are several Genoa mines up there.

Q. Just state what they were. What is the first one you have in mind?

A. There is a Genoa on the Mesabi.

Q. There is one on the Mesabi?

A. Yes.

Q. I will take them up separately. Who owns that mine?

A. I can not tell you now.

Q. You do not know?

A. No; not now.

Q. Do you know who owned it at any time?

A. I presume I did.

Q. Who?

A. I do not know.

Q. Oh. You do not now recall?

A. I do not recall.

Q. You said there were other Genoa mines. Where were they?

MR. LINDABURY: Before you go further, Judge, may I make a suggestion to you?

MR. DICKINSON: Yes.

MR. LINDABURY: I think you led the witness, perhaps, into making an erroneous statement a while ago.

MR. DICKINSON: In what respect? I did not lead him into it. He may have made an erroneous statement, but I certainly did not suggest what the witness should state.

MR. LINDABURY: I do not mean that you did it improperly, Judge.

MR. DICKINSON: I do not think I did it at all.

MR. LINDABURY: With respect to the sale of this ore in general commerce before the mine was sold to the Minnesota.

(At the request of counsel the stenographer read the questions and answers referred to as follows):

"Q. Before that was acquired by the Minnesota Iron Company, state where the ore of the Chandler mine was sold.

"A. Generally.

"Q. Generally in interstate commerce?

"A. Yes."

By MR. DICKINSON:

Q. Now, Mr. Gayley, I call your attention to the questions and answers which have just been read to you in regard to the Chandler mine. Your counsel suggests that you were led into an error. If you wish to correct that statement, I will give you an opportunity to do so.

(At the request of the witness the questions and answers referred to were again read.)

THE WITNESS: That is incorrect, because the Minnesota Iron Company controlled it from the beginning, and opened the mine.

By MR. DICKINSON:

Q. Was there a mine on the Vermilion Range known as the Vermilion mine?

A. There was a mine at Tower, which shipped a grade of ore called Vermilion ore. I do not know that it was called the Vermilion mine. They shipped two grades of ore, called the Minnesota and the Vermilion.

Q. Who controlled that mine?

A. That was the Minnesota Iron Company's mine.

Q. Do you know where it acquired it?

A. That was one of the inducements to build the Iron Range Road up to Vermilion range; the greatest inducement, I should say.

Q. Did the Carnegie Company buy ore from that Vermilion mine that you have designated?

A. It did.

Q. Up to what time?

A. About 1897.

Q. Up to 1897?

A. As far as I can recollect.

Q. Did they buy any after that?

A. I do not know.

Q. You do not recall?

A. I do not recall.

Q. State whether or not the Carnegie bought any from the Chandler Mine that we have just referred to.

A. They may have. I can not recall now.

Q. Where was the Champion mine?

A. On the Marquette Range.

Q. Who controlled that mine?

A. That was owned by Boston people.

Q. Was it acquired by any of the subsidiaries of the United States Steel Corporation?

A. Yes; I think the Carnegie Steel Company acquired it.

Q. At what time?

A. No; that was acquired by the Corporation.

Q. By the United States Steel Corporation?

A. Yes; that was acquired by the United States Steel Corporation.

Q. Had the Carnegie Company bought from that mine?

A. Very little.

Q. It had bought some?

A. Some.

Q. Where was the ore of that mine generally sold?

A. Through the middle west.

Q. What do you mean by the "middle west"?

A. From Pittsburgh to Chicago.

Q. Mr. Gayley, state whether or not the Minnesota Iron Company confined its sales to the Illinois Steel Company, or whether it sold to other consumers of ore.

A. It sold to other consumers.

Q. Who represented the Minnesota Iron Company? Who were their selling agents?

A. At what time?

Q. Say in 1897.

A. Pickands, Mather & Company.

Q. For what period did they represent them, if you recall?

A. They represented them for a long time.

Q. Who were Pickands, Mather & Company?

A. They were an ore firm in Cleveland.

Q. What was their business?

A. They were ore miners, ore agents, vessel owners and owners of coal mines.

Q. Was it a part of their business to sell ores for themselves and for other concerns for whom they were agents?

A. It was.

Q. I will read to you from the minutes of the Carnegie Steel Company, Limited, of a meeting of March 9th, 1897, which appear on pages 1077 and 1078, Government Exhibits, Vol. III, it appearing from the record that at this meeting there were present among others James Gayley, as follows:

"MR. LEISHMAN: I told Gates our position has been the same all through this discussion; we would do nothing whatever excepting agree not to sell ore, but would not be limited in our output."

What Gates does that refer to?

A. I think that refers to Mr. F. T. Gates, representing the Rockefeller Interests.

Q. State whether or not the Carnegie Company did agree that it would not sell ore?

MR. SEVERANCE: Just a moment. I object to that on the ground that it is immaterial to any issue in this case, for it appears by the minutes themselves that they are the minutes of the Carnegie Steel Company, Limited, which is not a defendant in this action, and it is only a limited partnership;

therefore its actions cannot be charged against either the Steel Corporation or any of its subsidiaries. The date is March 9th, 1897, as appears by the minutes. I will also object to it as leading.

MR. DICKINSON: Now answer the question.

THE WITNESS: I do not recall.

By MR. DICKINSON:

Q. Have you any recollection in regard to any such agreement as that?

A. I have no recollection whatever.

Q. I will continue reading:

"Mr Gates says the Minnesota Iron Company will lease a mine to the Illinois Steel Company on about the same terms as our Rockefeller lease. I said, 'Does that mean that the Minnesota Iron Company will take advantage of the lease to give the Illinois Steel Company cheap ore, and by a nominal lease get around any agreement as to price? If so, we will not stand it, and will be very aggressive in our policy.'"

Now state who of the Rockefeller people or the Standard Oil people were interested in the Minnesota Iron Company.

MR. SEVERANCE: What has that question to do with what you just read?

MR. DICKINSON: I do not have to explain that.

MR. SEVERANCE: I object to that; I do not see any connection.

MR. DICKINSON: If I have to stop and explain every question as to what has to do with it, it would be endless.

MR. SEVERANCE: I thought you might want to strike it out.

THE WITNESS: At this period there was a Gates representing the Rockefeller interests and one representing the Illinois Steel Company. I am rather confused as to which one he was talking to.

MR. SEVERANCE: You mean there were two Gates?

THE WITNESS: Yes. F. T. Gates and John W. Gates.

By MR. DICKINSON:

Q. I will go back and read you the first part of these minutes, from page 1077.

MR. SEVERANCE: I desire there to object to the witness being led in this manner, and also to any questions based on

these minutes, for the reason that they are the minutes of an organization which is not a defendant in this suit, and that the witness' recollection cannot be thus refreshed.

By Mr. Dickinson:

Q. (Continuing) Now I will read you:

"Mr. Leishman: The ore people have postponed their meeting once more.

Mr. Gates, Rockefeller's ore man, called me up on the telephone, and seems very anxious we should do something to bring about an understanding among the ore companies."

Now, what Mr. Gates would that be?

A. Mr. F. T. Gates.

Q. Is that the same Gates you referred to a while ago?

A. The first Gates, F. T. Gates.

Q. Now I will ask you to answer the question and state who of the people identified with the Rockefeller Interests or the Standard Oil Company interests were officers or directors of the Minnesota Iron Company.

A. I do not know of any.

Q. Do you know who of the Rockefeller or the Standard Oil Company interests were at any time officers of the Minnesota Company?

A. I never heard of any.

Q. At any time?

A. At any time.

Q. State whether or not at the period here referred to, to-wit, March 9, 1897, the Minnesota Iron Company and the Carnegie Company had been competitors in the purchase of iron ore properties in the Lake Superior District.

Mr. Lindabury: How can the witness know that?

Mr. Severance: May I ask to have that question explained? Do you mean had they been endeavoring to get the same properties, bidding against each other for the properties? What do you mean by competitors?

Mr. Dickinson: I will explain that; I am glad you asked me.

By Mr. Dickinson:

Q. Had they during that period and previous thereto both

been buyers, either directly or through other companies, of iron ore properties in that region?

A. I think they had.

Q. Mr. Gayley, state whether or not from 1895 to April 1, 1901, the Oliver Iron Mining Company sold to other consumers of ore besides the Carnegie Steel Company.

A. It sold to the Oliver-Snyder Company.

Q. What was the Oliver-Snyder Company?

A. It was a steel works. I will say they controlled some blast furnaces in the Valley.

Q. Did they make pig iron?

A. And made pig iron.

Q. Did they make steel products of pig iron?

A. Not the Oliver-Snyder Company.

Q. Did any company affiliated with them?

A. The Oliver Iron & Steel Company.

Q. Was that an affiliated company with them?

A. Mr. Oliver was interested in both companies.

Q. State whether or not part of the ore sold from that company was used by those companies in the manufacture——

A. (Interposing) By the Oliver-Snyder Company.

Q. The Oliver-Snyder Company owned a part of that, did they?

A. A part of what?

Q. A part of the Oliver Iron Mining ore properties.

A. The Oliver interests owned one-sixth.

Q. And they got that one-sixth?

MR. SEVERANCE: I think the witness misunderstood your question, Judge?

MR. DICKINSON: No, I think not.

MR. SEVERANCE: The way your question was put, it was not quite correctly answered.

(By request the stenographer repeated the questions and answers referred to as follows:)

"Q. The Oliver-Snyder Company owned a part of that, did they?

"A. A part of what?

"Q. A part of the Oliver Iron Mining ore properties.

"A. The Oliver interests owned one-sixth."

By MR. DICKINSON:

Q. Is it a fact that the Oliver-Snyder Company, by reason of their interest in the stock and an understanding with the Carnegie Company, got one-sixth of the output of the ore of the Oliver Mining Company?

A. I would correct that by saying that the Oliver interests owned one-sixth. The Oliver-Snyder Company was a different institution, in which Mr. Henry W. Oliver and W. P. Snyder were interested.

Q. Was Mr. Henry W. Oliver interested in the concern that owned one-sixth?

A. Yes.

Q. State whether or not that one-sixth went to those people.

A. It went to the Oliver-Snyder Company.

Q. And were they engaged in the making of pig iron and the selling of pig iron?

A. They were.

MR. SEVERANCE: Judge, you have not yet cleared up that little error. You asked if they owned one-sixth of the ore properties, and he assented to that.

MR. DICKINSON: Has he not explained it?

MR. SEVERANCE: No, he has not.

MR. DICKINSON: What do you want?

MR. SEVERANCE: I want it to appear as it was, that the Oliver Iron Mining Company owned the ore properties, and that the Oliver interests owned one-sixth of the stock of the Oliver Iron Mining Company, and the Carnegie Company owned the other five-sixths of the stock—not of the properties.

MR. DICKINSON: I think that appears on the record.

MR. SEVERANCE: That is the fact, at any rate.

THE WITNESS: That is the situation.

By MR. DICKINSON:

Q. State whether or not afterwards that one-sixth interest was acquired and controlled by a subsidiary of the United States Steel Corporation.

A. It was.

Q. So, then, the United States Steel Corporation acquired and controlled, either directly or through its subsidiary, the entire output of the Oliver Iron Mining Company?

A. They acquired the entire stock of the Oliver Iron Mining Company.

Q. When was that?

A. That was at the beginning of the Steel Corporation.

Q. You mean by acquiring the entire stock that they got the additional one-sixth?

A. Precisely.

Q. When did they get that, if you know?

A. Who?

Q. Either the Carnegie Company or the United States Steel Corporation. Which one did get it?

A. The one-sixth interest was sold to the Corporation by Mr. Henry W. Oliver.

Q. When?

A. In 1901, on the organization of the Steel Corporation.

Q. Was the Mountain Iron Company acquired by lease or otherwise by the Oliver Mining Company?

A. It was.

Q. At what time?

A. I think in 1897.

Q. What interests controlled that at the time of that acquirement?

A. The Consolidated Iron Mines, owned by the Rockefellers.

Q. Where was the ore from that mine sold at the time previous to the acquirement of it by the Oliver Mining Company?

A. It was sold generally throughout the Ohio Valleys, as far as I know.

Q. Where was that mine situated?

A. It was situated at Mountain Iron, Minnesota.

Q. What was the character of that, as to quality?

A. It was average good quality Mesabi ore.

Q. What as to the extent of the output?

A. It was, when acquired, the largest producing mine on the Mesabi Range.

Q. Where were the Tilden mines?

A. At Bessemer, Michigan.

Q. Who controlled those mines?

A. The Rockefeller interests.

Q. Were they acquired or not by the Oliver Iron Mining Company?

A. They were.

Q. At what time?

A. I think it was in 1900.

Q. Previous to that acquirement where had the ores of that mine been sold?

A. I do not know.

Q. State whether or not they were sold in competition with other ores in the Lake Superior district.

MR. SEVERANCE: I object to that. The witness has said that he does not know. How can he tell whether they were sold in competition or whether they were sold otherwise, if he does know where they were sold?

MR. DICKINSON: He may know. I am trying to find out.

THE WITNESS: I just said that I do not know.

By MR. DICKINSON:

Q. What was the character of that ore?

A. It was similar to the Norrie, but not quite so good.

Q. What was the extent of the output at the time it was acquired?

A. Very small.

Q. Where was the Queen group of mines?

A. Negaunee, Michigan.

Q. I asked you about the output of the Tilden mines. What was the extent of the ore holdings of that mine? Was it large or small?

A. At the time of its acquisition the mine looked very poorly. There was very little developed ore.

Q. Had there been any effort to develop it to any great extent at that time?

A. At what time?

Q. At the time it was acquired by the Oliver Iron Mining Company.

A. Effort was made after it was acquired.

Q. But previous to that time?

A. I do not know anything about previous work.

Q. How did it turn out?

A. Moderately good.

Q. I asked you a few moments ago about the Queen group of mines. Is that in what was called the Iron River district?

A. In the Marquette district.

Q. State whether those were acquired by the Oliver Iron Mining Company.

A. They were.

Q. At what time?

A. In 1897 or 1898, or along there.

Q. From whom?

A. From Corrigan, McKinney & Company of Cleveland.

Q. What was their business?

A. They were miners of ore, sellers of ore, and makers of pig iron.

Q. State whether or not the Carnegie Company had bought ores from them.

A. I believe they had.

Q. Were they or not engaged in the general business of selling ores to consumers of iron ore?

A. I think so.

Q. In what sections of the country were they selling,—Corrigan, McKinney & Company?

A. Their ore was largely non-Bessemer ore. Naturally it would be sold in the district contiguous to Cleveland, to makers of foundry iron.

Q. Where did that ore come from that they were handling; partly from the Queen group of mines?

A. That who were handling?

Q. Corrigan, McKinney & Company.

A. From the Queen group of mines.

Q. State whether or not, at the time that the Queen group of mines was acquired by the Oliver Iron Company, it was the largest of the group of mines in the Iron River District.

A. It was not in the Iron River District.

Q. In what district was it?

A. The Marquette.

Q. State whether or not it was the largest group of mines in the Marquette District.

A. At what time?

Q. At the time it was acquired by the Oliver Iron Mining Company.

A. It was not.

Q. What other was larger?

A. The Lake Superior Iron Company and the Cleveland Cliffs Iron Company.

Q. Who controlled the Lake Superior?

A. The Lake Superior was controlled, either then or thereabouts, three quarters by the Oliver and one-quarter by the Cleveland Cliffs Iron Company.

Q. What became of the other quarter, of the Cleveland Cliffs?

A. They still have it, so far as I know.

Q. Who has it?

A. The Cleveland Cliffs Iron Company.

Q. What other mine did you mention there?

A. The Cleveland Cliffs.

Q. Is that company in operation now?

A. It is.

Q. Who are the parties interested in that?

A. The president is William T. Mather, of Cleveland.

Q. Who else are interested in that?

A. I do not know all the stockholders.

Q. Well, officers or directors?

A. I do not know who was Secretary or Treasurer.

Q. You have mentioned two that you say were larger at that time?

A. Yes.

Q. And of one of those two you say that three-fourths was owned by the Oliver Iron Mining Company. Is that correct?

A. The Oliver owned three-fourths of the Lake Superior Iron Company.

Q. That is one of those you mentioned?

A. That is one I mentioned.

Q. State what mines were owned by the Cleveland Cliffs Company at that time, in that region.

A. They had their hard ore mines and their soft ore mines.

Q. Will you give the names?

A. They designated them, as I recall, as the Lake Mine, and—I have forgotten now.

Q. I will read you from the minutes of the Carnegie Steel Company, Limited, Government Exhibits Vol. III., page 1,247, a communication beginning as follows, on page 1,243:

"The following communication from James Gayley, to the Chairman, under date of May 1st, was read:—"

The particular part of that communication I am going to read you now is on page 1,247, as follows:—

MR. SEVERANCE: I object to his reading as leading and as incompetent and immaterial, as being from the minutes of a Company not a defendant, and the witness' recollection cannot be refreshed in this way.

MR. DICKINSON: (Continuing.) "General remarks: The Non-Bessemer Ores—being of less value in the market as compared to Bessemer—become more desirable as mining propositions when located on the eastern ranges of the Lake ore region, and as our requirements for non-Bessemer ore for the manufacture of basic iron are constantly on the increase, it is of vital importance to increase our holdings of non-Bessemer property—particularly now when the manufacture of basic steel and of foundry iron on the Lakes has received an increased stimulus.

"With respect to the non-Bessemer properties in Michigan—we now control nearly all of the Mines in the Iron River district—there remains then, in Mines of any magnitude those at Ishpeming and Negaunee—consisting of the Queen Group—the Cleveland-Cliffs, and the Lake Superior; the Queen, which is the largest of the group, has passed to our control. The Cleveland-Cliffs is not for sale, and the securing of the Lake Superior property is highly important and necessary to our future requirements. The supply of Hard Ore is very important, as we require about 40,000 tons per annum in our Open Hearth Furnaces—and any excess is specially desirable in the Blast Furnaces in facilitating the use of the Mesaba ores."

Now I will ask you whether or not the statement made by you at that time, that "the Queen, which is the largest

of the group," was correct or not. I will ask you to consider and state whether it was.

THE WITNESS: May I ask what year that was?

MR. SEVERANCE: May 1st, 1899, is the date of the meeting.

THE WITNESS: What I meant in this connection by "largest of the group" referred entirely to non-Bessemer ore, not to the extent of mines, generally.

By MR. DICKINSON:

Q. Then it was the largest of the group of non-Bessemer ores?

A. It was.

Q. At that time?

A. At that time.

Q. State whether or not at that time you controlled nearly all of the mines in the Iron River District.

A. The then known mines.

Q. The then known mines?

A. Yes.

Q. You spoke of the Lake Superior Iron Company as having one of the largest mines of that group?

A. Yes.

Q. When was the three-fourths interest of the Lake Superior Iron Company acquired by the Oliver Iron Mining Company?

A. As far as I can recall, about 1898 or 1899.

Q. From whom did they acquire it?

A. From the owners.

Q. Who were they,

A. I think the principal ones were in Boston.

Q. Where, at the time that this ownership was acquired, were the ores of the Lake Superior Iron Company sold?

A. They were distributed from Cleveland. I do not know where.

Q. They were carried from the Lake region to Cleveland?

A. Yes.

Q. And distributed from Cleveland?

A. Principally.

Q. What was the kind of ore?

A. They had all kinds. I think at the time of the acquisi-

tion by the Oliver Mining Company they had about twelve different grades of ore.

Q. And those grades were distributed from Cleveland?

A. I do not know that.

Q. Was the bulk of it distributed from Cleveland, Was that their general distributing point?

A. That is the general distributing point for ores; points contiguous to Cleveland.

Q. Where were the mines of the Security Land & Exploration Company?

A. On the Mesabi Range.

Q. What character of ores were they?

A. The usual grade of Mesabi ore.

Q. What was the extent of the holdings of that company?

A. They had a large acreage, but very little ore.

Q. Were they mining and selling ore?

A. They were not.

Q. Was it acquired by the Oliver Iron Mining Company?

A. It was, eventually.

Q. At what time?

A. From 1896 to 1898. I cannot say definitely.

Q. Was any ore being mined there at the time it was acquired?

A. Not that I can recall.

Q. State whether or not the Rouchleau mine was acquired, or any part of it, by the Oliver Iron Mining Company.

A. The name is familiar, but I cannot recall definitely now about the acquisition.

Q. Do you recall, Mr. Gayley, the controversy between the Rockefeller interests and the Carnegie interests in regard to the Oliver Iron Company people having acquired an interest in the Rouchleau contrary to an agreement, and your going to New York and interviewing Mr. Gates and others in regard to that contract, and your making a report about it?

A. I think we did acquire a property designated as the Rouchleau.

Q. Where was that located?

A. It is on the Mesabi Range.

Q. What was the character of ore—Bessemer or non-Bessemer, or both?

A. I should say it was both.

Q. State whether or not it was an operating mine.

A. My recollection is that it was not.

Q. Of what character was it as to the extent of its then supposed holdings?

A. My impression now is that it was a good sized deposit of ore.

Q. Who were the people that owned it at the time this interest was acquired by the Oliver Iron Mining Comany?

A. I cannot recall.

Q. Mr. Gayley, prior to the organization of the United States Steel Corporation, state whether or not it was always feasible and practicable to go into the large holdings in Minnesota, for instance, where the Rockefeller and other interests were, or where the lumber interests had iron ore, and lease additional properties available for the mining of iron ore.

A. It was.

Q. Mr. Gayley, taking the period from April 1, 1901, back for three or four years, what concerns were the largest holders and operators of iron ore properties in the Mesabi region?

A. The Consolidated Iron Mines and the Minnesota Iron Company.

Q. How about the Oliver?

A. They were comparatively small.

Q. You mean, as compared with the other two?

A. Yes.

Q. What would you say about them, as compared with others, excluding those other two?

A. They were larger, as I recollect.

Q. Then would or would not the three largest during that period be the Minnesota Iron Company, the Consolidated Iron Mines and the Oliver Mining Company?

A. They would.

Q. In the minutes of the Carnegie Steel Company, Limited, Government Exhibit Vol. III, page 1309, under the heading on page 1307, is the following communication from James Gayley to the Chairman, under date of November 10, the date of the meeting being 1899. I read you as follows from that:

MR. SEVERANCE: I object to counsel leading the witness,

and to his reading to the witness the minutes of a meeting of a company which is not a defendant to this suit, as an improper way to refresh his recollection.

MR. DICKINSON: I am asking about certain facts.

MR. LINDABURY: Can we not frame one objection, and, by agreement, have that run along to all of this reading of minutes instead of repeating it every time?

MR. DICKINSON: Yes.

MR. SEVERANCE: I think the last objection I made before this was full enough.

MR. DICKINSON: I am reading, now, from a report made by the witness himself.

MR. LINDABURY: That would make no difference. I think you have no right to suggest his answer or lead him or refresh his recollection in that way.

MR. DICKINSON: You can make your objection now.

MR. SEVERANCE: I will add to my objection. We also object to the reading of the minutes of this meeting, or any other meeting of any corporation whatsoever, the minutes of which have been already introduced in evidence, as leading and an improper way to refresh the recollection of the witness, and as suggestive, the witness being under direct and not under cross examination. It is understood that this objection shall apply to the reading of any minutes, or of any evidence of any other witnesses, or documents.

MR. DICKINSON: All right.

MR. SEVERANCE: With the same effect as if made in each instance. Is that agreeable to you, Judge?

MR. DICKINSON: Yes. Certainly. (Reading)

"Would it not seem that by allying ourselves further with Mr. Rockefeller—who has not grasped the situation this season on the Missabe Range—that we are giving the Federal Steel Company an increased advantage? The turning over to Mr. Rockefeller of our holdings would put him and the Federal Steel Company more nearly even, at the same time we would be at the mercy of their joint arrangement—whereas now we have the balance of power, and with Hill's road in the field, we are in an independent position. Is not then the question more vital as between the Federal Steel

Company and ourselves rather than with Mr. Rockefeller?"

Now, state whether or not at that time there was a sharp competition between the Carnegie Company and the Federal Steel Company in the sale of steel products.

A. I presume there was; they were always competitors.

Q. State whether or not at that time and previous thereto the Carnegie Company and the Federal Steel Company had been buying up ore lands in the Mesabi Region.

A. No.

Q. I do not mean together.

A. No, the Carnegie Company was not buying ore lands.

Q. I will put it this way: State whether or not at that time the Minnesota Iron Company, controlled by parties who were controlling the Federal Steel Company, and the Oliver Iron Mining Company, controlled by the Carnegie Company, had not been competitors in the purchase and control of iron ore companies in the Mesabi Region?

A. The Oliver Iron Mining Company I know was active in acquiring ore properties; to what extent the Minnesota Company was active I could not say.

Q. In reporting, Mr. Gayley, as shown by the passage just read to you, that the turning over to Mr. Rockefeller of your holdings would put him and the Federal Steel Company more nearly even, and at the same time your company would be at the mercy of their joint arrangement, state whether or not that was in contemplation of the competition existing between your company and the Federal Company that that statement was made.

A. It would have nothing whatever to do with it.

Q. What did you mean?

A. It goes back much farther than that as a proposition. To explain, the Rockefeller people had promised Mr. Oliver, on leasing the Mountain Iron Mine, that they would supply him with additional ore bodies. They declined later to do it, and we decided to select ore properties and procured leases on them, and Mr. Gates felt that we should turn those ore properties back to him and take sub-leases from them; and that, as I recollect, is what that refers to.

Q. What did you mean when you said that you would be at the mercy of their joint arrangement?

A. If they did not choose to turn those ore bodies back to us on an equitable basis.

Q. Up to that time did you have the balance of power?

A. No, not before that.

Q. But at that time?

A. With our recent acquisitions we were in an independent position.

Q. And if you turned those properties back to the Rockefellers, and they should turn them over to the Federal, what position would that have put you in? Would you still have been as independent?

A. I cannot imagine a situation where they would turn our properties over to the Federal.

Q. Explain what you mean by this: "The turning over to Mr. Rockefeller of our holdings would put him and the Federal Steel Company more nearly even, at the same time we would be at the mercy of their joint arrangement."

Now, what joint arrangement did you have in mind?

A. They had some arrangement between themselves regarding the acquisition of ore properties with which I was conversant at the time, the details of which I cannot recall now.

Q. State generally what it was.

A. I say I cannot recall it now.

Q. You knew it then?

A. I did at that time.

Q. You knew it at the time you made this report?

A. Yes.

Q. And you cannot now state what it was? Can you not state anything at all about it?

A. No, I cannot recall it sufficiently well now to make a definite statement.

Q. What was the character of that joint arrangement, the general character of it?

MR. SEVERANCE: Has not the witness repeatedly said that he cannot tell; that he does not remember?

MR. COLTON: He said "in detail."

MR. DICKINSON: I am not asking for detail; I am asking the general character of it.

THE WITNESS: The general character was that, after hav-

ing acquired large holdings on the Mesabi Range, they would not be active competitors against each other.

By Mr. Dickinson:

Q. Who?

A. The Minnesota and the Consolidated Mines.

Q. Would not be competitors against each other?

A. Against each other.

Q. After acquiring certain properties; do you know to what extent that went, and where those properties were?

A. I did not say after acquiring certain properties.

Q. You said after acquiring large holdings, didn't you?

A. Yes.

Q. Where were those large holdings?

Mr. Lindabury: Just a moment. I think we ought to know whether this witness is testifying to something he knew about, or whether this is mere rumor that he heard, which perhaps justified his report. We do not know.

Mr. Dickinson: I do not know whether he knows or not, and I object to counsel stating to the witness that he does not know.

Mr. Severance: The witness has already said that he does not know.

Mr. Colton: He said he did know at the time, and in a general way he knows now.

Mr. Severance: He does not know it now.

Mr. Dickinson: I object to counsel suggesting to their own client, a defendant in the case, as to answering a question I am asking him.

Mr. Lindabury: I am not making that suggestion; I am making a suggestion that you are getting out evidence as if it were first hand, original evidence, when it probably is not and is hearsay.

Mr. Dickinson: That could be shown, if it was so.

Mr. Lindabury: You have no business to put it in at the beginning, if it is not true.

Mr. Dickinson: Will you please read the record?

(Upon request the stenographer repeated the question under discussion, and Mr. Lindabury's first statement.)

THE WITNESS: What is the question?

(At the request of the witness the stenographer repeated the question as follows):

"Q. Where were those large holdings?"

By MR. DICKINSON:

Q. Answer the question to the best of your knowledge, where were those large holdings?

A. On the Mesabi Range.

Q. I will ask you whether or not, after the formation of the Federal Company, and before its acquisition by the United States Steel Corporation, the Federal Company was making a determined effort to purchase the properties in the Mesabi Region belonging to the Rockefellers, whether or not that information was communicated to the Carnegie people.

MR. SEVERANCE: I object to that as evidently calling for hearsay, and not something that he knew of his own knowledge, but something that was told him by someone else, if he knew anything about such an arrangement.

MR. DICKINSON: I will read from Volume III, page 1172, of the Carnegie Minutes, shown upon page 1169, a meeting of December 27, 1898, at which Mr. Gayley was present. The passage I will read is from a communication read at that meeting to the directors there present, from Henry W. Oliver, a letter dated December 24, 1898, the passage being as follows:—

MR. SEVERANCE: I object not only on the grounds heretofore mentioned, to the reading of all minutes, but specifically on the ground that counsel states that he proposes to read a letter written by an outside person, to wit, Mr. Oliver.

MR. DICKINSON: I will state that the object of this is to show that from Mr. Henry W. Oliver, who represented the Carnegie people in the acquirement of their iron ore, there was communicated to the Carnegie people, at a meeting at which Mr. Gayley was present, information which brought to their attention the fact that the Federal Steel Company was very active and vigorous and determined in the acquirement of certain properties in that region. That is the object of showing it.

MR. SEVERANCE: And it is only fair to state that the very thing you propose to read shows it is hearsay. Mr. Oliver says it is only hearsay.

MR. DICKINSON: I want to show that the fact was brought to their attention, whether true or not.

MR. SEVERANCE: You do not show any fact brought to their attention. You show rumor.

MR. DICKINSON: The fact of the communication. Now I will read.

MR. SEVERANCE: It is a question whether it is legitimate.

MR. DICKINSON: (Reading) "From information that I consider very reliable, I judge that the Federal Steel Company are making a most determined effort to purchase all the properties belonging to our landlords. I am confirmed in this opinion by the conduct of our friends and their actions during the negotiations I have had with them during the past two weeks. I consider the matter so serious that I deem it my duty to stay right here on the spot and be in their office every day until I can decide whether or not they are going to sell their properties."

Do you know to whom he referred when he used the word "landlords" in that connection?

A. The landlords at that time were the Consolidated Iron Mines.

Q. State whether or not, Mr. Gayley, as a director—you were a director at that time, were you not?

A. I was not.

Q. Well, state whether as an alternate, attending the meetings of the Carnegie Company in that capacity, you understood that the Federal Company was active in acquiring iron ore properties in the Mesabi region.

MR. SEVERANCE: I object to that, for the reason that it is calling for a statement by the witness of some understanding that he arrived at from a letter written by another person, which does not even profess to give the facts, but merely gives the judgment of that outside person, and therefore any statement Mr. Gayley could make on the subject would be the rankest hearsay.

THE WITNESS: As a matter of fact, I recall nothing about——

By MR. DICKINSON:

Q. You recall nothing about the meeting?

A. I recall nothing about this communication?

Q. I will read you, Mr. Gayley, from page 1139 of the same volume, meeting of September 20, 1898, a letter dated September 16, 1898, shown on page 1138 to be from Mr. Oliver, in which he says——

MR. SEVERANCE: I make the same objection as heretofore introduced, which is to cover all readings of minutes, and the additional objection that this is a statement by an outside party and shows on its face that it was only hearsay.

By MR. DICKINSON:

Q. I read:

"A more important matter, however, developed. I drew out of Mr. Gates the fact that they had been approached repeatedly (I think by their Standard Oil Associates, who are largely interested in Minnesota Iron Company and Illinois Steel Company Stocks), to merge, or trade, or sell for cash, the Rockefeller interests in the North-West, to the new Federal Steel Company. I served notice on Mr. Gates, with a promise from him that he would convey the same to Mr. Rockefeller. That this was contrary to the spirit of our Agreement that it was a menace to our interests, and that on no account should anything be done that would make the Federal Steel Company our landlords. I secured a promise that if things should come to a head the matter would first be laid before us.

"I think this is an effort, on the part of H. H. Rogers, Brewster, Bishop and other Standard Oil partners of Mr. Rockefeller, to induce him to join the Federal Steel Company in controlling the Ore situation, as they have heretofore controlled the oil trade."

I will ask you whether or not, acting in the capacity you did, as an alternate, you at or about that time received information that the Federal people and the Standard Oil people were about to make a combination, and that you, as

such officer, or acting in that capacity, regarded that as inimical to the Carnegie Company?

MR. SEVERANCE: I object to that, as it calls for hearsay. I object to the question also as leading, incompetent, irrelevant and immaterial.

THE WITNESS: Personally I can recall nothing about it, but I do know, as a matter of fact, that Mr. Oliver was constantly parading scarecrows to persuade the Carnegie Steel Company to buy more ore.

By MR. DICKINSON:

Q. Did you buy it?

A. We often did.

Q. Did you know, then, that they were scarecrows?

A. I do not recall this particular case.

Q. When did you find out that they were scarecrows?

A. We had a good many as we went along.

Q. I know; but when did you discover any one that you refer to as being a scarecrow? When did you discover that it was a scarecrow?

A. I do not quite understand your question.

Q. I understand you to say that Mr. Oliver from time to time paraded scarecrows?

A. Yes.

Q. That you are now of opinion that certain incidents were scarecrows?

A. I did not say certain incidents were scarecrows.

Q. Well, some incidents, then.

A. I cannot recall the various incidents, but we were of the impression at the time that they were not as dangerous as they were presented to us.

Q. Did you go on and buy ores for the Oliver Company?

A. Oh, yes.

Q. From time to time?

A. We did.

Q. When did you find out that they were scarecrows? After you bought or before you bought? Or do you know whether you did find it out at all or not?

A. I am simply giving you the impression that we were under in the Carnegie Steel Company at that time, that these

dangerous situations that were presented to us in connection with the acquisition of ore properties would not materialize.

Q. State whether or not it was the policy of the Carnegie Company, notwithstanding the scarecrows of which you speak, to acquire all the ore they could in that region.

A. It was the policy of the Oliver Iron Mining Company to fortify itself with ore to the fullest extent that it could.

Q. Still you have not answered, Mr. Gayley, the question as to any particular incident, if you do recall any particular incident, that you now regard as being a scarecrow, as to when you discovered that fact.

A. I can not recall dates at this time.

Q. And you have no particular incident in mind?

A. I think this was one.

Q. You think this was one?

A. Yes.

Q. Did you have this in mind when you spoke of a scarecrow?

A. Yes.

Q. Do you recall this incident?

MR. SEVERANCE: I think he already stated that he did not recall the specific incident——

MR. DICKINSON: Wait a minute. Let us see.

THE WITNESS: I do not know that I can say that I can specifically recall this particular case.

By MR. DICKINSON:

Q. Then can you specifically say that this was a scarecrow?

MR. SEVERANCE: I object to any further cross examination of this witness by counsel along this line.

MR. DICKINSON: I am not cross examining. You seem to think that every question I ask is cross examination.

MR. SEVERANCE: Most of them are, Judge.

MR. COLTON: He is trying to find out what a scarecrow is.

MR. SEVERANCE: They are either that or leading questions.

MR. DICKINSON: As far as that is concerned, I contend,

and have all along contended, that I have the right, if I choose to do so, either to lead or to cross examine.

MR. SEVERANCE: I am familiar with your contention, Judge. The trouble is there is no authority in the books to support it.

MR. DICKINSON: I think there is.

(By request the stenographer repeated the pending question, as follows:)

"Q. Then can you specifically say that this was a scarecrow?"

By MR. DICKINSON:

Q. What do you say to that?

MR. SEVERANCE: The witness having already stated that he has no recollection about this incident, I submit it is not within any rules to ask him the question just put.

MR. DICKINSON: If he will answer the same thing you have just stated, I shall be perfectly satisfied.

MR. SEVERANCE: He has said it two or three times.

MR. DICKINSON: I do not think he has answered it at all.

THE WITNESS: I have given you all the information on the subject that I know and have.

By MR. DICKINSON:

Q. And is that all the answer you can give to that question?

A. That is all.

(Whereupon, a recess was taken until two o'clock p. m.)

AFTER RECESS.

JAMES GAYLEY,

the witness under examination when the recess was taken, resumed the stand for further

DIRECT EXAMINATION (Continued)

By MR. DICKINSON:

Q. Mr. Gayley, you were asked about whether the Car-

negie Steel Company and the Federal Steel Company, through their respective subsidiaries or allied companies, the Minnesota Iron Company and the Oliver Iron Mining Company, were competing with each other in the purchase of iron ore properties. I will ask you whether you recall anything about the Negaunee Mine and the question arising as to the Federal Steel Company's attempting to get that mine, and the Carnegie Company, through the Oliver Iron Mining Company, considering the question of purchasing it in order that it might not go into the hands of the Federal Steel Company.

A. I never heard of the Federal Steel Company's ore department considering the purchase of the Negaunee Mine. That is the Queen Group, I understand, at Negaunee.

Q. I will ask you, if you did not hear of the Federal Company through its subsidiary attempting to get it, whether or not that consideration weighed with the Carnegie Company in determining whether or not it would get the property?

A. I conducted all those negotiations with the Minnesota Iron Company, which was the mineral branch of the Federal Steel Company, and as far as I can recall it was never mentioned with respect to those negotiations.

Q. Was there a mine known as the Negaunee Mine?

A. There was a mine known as the Negaunee Mine; and there were the Queen Mines at Negaunee.

Q. This Negaunee Mine was the mine known by that name, was it?

A. There was a mine known by that name.

Q. Was that acquired by the Oliver Iron Mining Company?

A. It was under lease at one time, and later passed to the Cleveland Cliffs Iron Company.

Q. It was taken under lease for the Oliver Iron Mining Company, wasn't it?

A. At one time.

Q. At what time was that? State whether it was about 1898.

A. Along about that period.

Q. Along about that time?

A. Yes, sir.

Q. I will ask you whether, in determining whether this

would be leased or taken over by the Oliver Iron Mining Company, the consideration weighed with the Carnegie people that if they did not take it over it might go into the hands of the Federal Steel Company.

A. Absolutely not. The situation was this: They demanded something over a million dollars for an extension of the lease of that property, and we felt that it was not worth that much money.

Q. How much did you say?

A. They asked something over a million dollars for a renewal or extension of the lease on the Negaunee Mine. The fee owners asked that. We gave it up, because we did not feel that the amount of ore shown up in the mine at that time justified us in paying such an amount for an extension of the lease.

Q. When did you give it up?

A. I cannot recall exactly. It was after the Steel Corporation was formed.

Q. It was after the formation of the United States Steel Corporation?

A. Yes, sir.

Q. But now I am asking you, Mr. Gayley, as of a period prior to that time, and at the time that you did take it under a lease, whether or not one of the considerations that weighed with the Carnegie people in determining that question was that if they did not, it might fall into the hands of the Federal Company, because the Federal Company at that time was acquiring properties in that region.

A. I have no recollection of it.

Q. I will see if I can refresh your memory and ask you then what your recollection is.

MR. SEVERANCE: You are about to read something?

MR. DICKINSON: Yes.

MR. SEVERANCE: I will wait until you state where you are going to read from.

MR. DICKINSON: I read from page 1164, Government Exhibits, Vol. III, from the minutes of the Carnegie Steel Company, Limited, November 29, 1898, at a meeting where you are recorded as saying:—

MR. SEVERANCE: Before you read that, I would like to reserve the same objection as we have already made to other minutes read to the witness.

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. I read from the place stated:

"We have secured options on 360 acres in the Iron River district, Michigan. These options are all in the Iron bearing territory and include several mines. There are 160 acres yet to be secured for which negotiations are not being carried on.

"Among the unsecured properties is the Dober mine, which produced 5,000 tons this year, and contains a good deposit of ore. Our option for a lease extends to May 31, 1899, and does not require the payment of any Bonus."

Then, near the top of page 1165:

"Mr. Corrigan, of Corrigan, McKinney & Company, Cleveland, advised me yesterday by telephone that he would forward today an option on the Buffalo group of the Queen Iron Mining Company, at Negaunee, Michigan. This includes the mines designated as Buffalo, South Buffalo, Queen, Prince of Wales and Blue. By Mr. Clemson's report in 1897, it is estimated there are fully 2,000,000 tons of ore developed with as much more not yet opened up, and there is an opportunity to secure adjoining territory which is exceedingly promising. This property, with the Iron River, comprise the two great deposits of non-Bessemer Ores in Michigan, which can be mined cheaply, and both, being low in Manganese, make them desirable for use in Basic Iron.

"Mr. Oliver and I are still working on these options. I think it wise for us to cover all of that district we can get. Ore Mines, under present conditions, are better Assets than Works are, and I think we will use 400,000 tons of non-Bessemer Ore next year.

"MR. CLEMSON: " 'The Negaunee is the largest non-Bessemer Ore property not taken up by the Federal Steel Company; and if we do not take it, I think they will.' "

What did he refer to there by "Negaunee"?

A. He meant that Buffalo and Queen group of mines.

Q. And that is different from what you referred to a while ago as the Negaunee?

A. That is different from the Negaunee Mine.

Q. I will put my question in this way: In acquiring the Negaunee Mine, as referred to by Mr. Clemson here, was or was not the Carnegie Company influenced by the statement and the fact that it was the largest non-Bessemer ore property not taken up by the Federal Steel Company, and that if the Carnegie Company did not take it they thought the Federal would?

A. I can recall nothing respecting this Queen group of mines at Negaunee wherein the Federal Steel Company or the Minnesota Iron Company were at all considered in those negotiations. I can recall nothing in the spirit of those negotiations that would persuade Mr. Clemson to have made that statement, at the present time.

Q. I will ask you to look at the map here shown you, which appears in the first annual report of the United States Steel Corporation, and which has been put in evidence, said report being dated December 31, 1902, and ask you to examine the map and the Duluth & Iron Range Railroad and the Duluth, Missabe & Northern Railroad and the Great Northern Railroad as laid down on that map, and state whether or not they were substantially the same in 1901, when the Steel Corporation was formed, as they are shown on this map.

Mr. Severance: If he knows.

The Witness: With reference to the Duluth & Iron Range and the Duluth, Missabe & Northern, I should say they were. I do not see much of the Great Northern on this map.

By Mr. Dickinson:

Q. The extensions are not shown there?

A. No.

Mr. Severance: Explain a little more definitely what you mean by "extensions," will you not?

Mr. Dickinson: I meant by "extensions" the tracks leading into iron ore properties.

MR. SEVERANCE: Is that what you understood by "extensions," Mr. Gayley?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. State whether or not on April 1, 1901, the iron ore mines that were being operated in the Mesabi region were practically accessible from both of these roads, the Duluth & Iron Range and the Duluth, Missabe & Northern.

A. Do you mean all of the mines?

Q. Practically all of them.

A. They were not.

Q. What mines were accessible to both of them?

A. Virginia and Biwabik.

Q. You understand that the Duluth & Iron Range extends over to Auburn and Sauntry?

A. It extends to Virginia.

Q. And to Auburn?

A. To Biwabik.

Q. There is a parallel line between the Duluth, Missabe & Northern, or, rather, northwest of the Duluth, Missabe & Northen, a parallel line of the Duluth & Iron Range?

MR. SEVERANCE: I desire to object to this question and to any further questions as to the Duluth, Missabe & Northern or the Duluth & Iron Range Railroads, on the ground that said testimony is immaterial to any issue raised by the pleadings in this case, and I understand that that objection may stand with reference to any further inquiries along this line, and also is understood to apply to the preceding questions with reference to the Iron Range and Missabe.

MR. DICKINSON: Certainly.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. How far was it; what was the distance between those two parallel lines of those two roads?

A. I can not recall. The branch road that ran over from the Duluth & Iron Range was constructed to the Fayal mine, which was owned by the Minnesota Iron Company.

Q. Upon what line was the Genoa and the Spruce, Adams, Fayal and Auburn located?

A. They were on the Missabe & Northern.

Q. These dots would seem to indicate that they were on the other line. It was a very short distance, was it not between those two parallel lines?

A. Not a great distance.

Q. About what distance?

A. Probably six or seven miles.

Q. The Stephens mine is nearer to the Duluth & Iron Range, is it not?

A. Yes; about six miles.

Q. Do you know whether or not a contract was made by which the ore from that mine was to be shipped over the Duluth, Missabe & Northern?

MR. SEVERANCE: I suppose the contract would be the best evidence. I object to it on that ground.

THE WITNESS: That was arranged for in the final deal with the Rockefeller interests for their ore reserves.

By MR. DICKINSON:

Q. When you referred to extensions, did you understand the question to refer merely to the Great Northern?

A. By "extensions" I meant connections from the main line to the mines.

Q. What road?

A. I supposed you referred to all the roads.

Q. You supposed I referred to all of them?

A. Yes.

Q. There are extensions not shown on this map?

A. Plenty of them.

Q. State whether or not in 1901, the time of the formation of the United States Steel Corporation, the Duluth & Iron Range and the Duluth, Missabe & Northern were competitors in carrying ore from the Mesabi region to the lake ports where they took ship.

MR. SEVERANCE: I object to that on the ground that it is irrelevant to any issue raised by the pleadings in this action.

THE WITNESS: Only at two points, Virginia and Biwabik.

By Mr. Dickinson:

Q. Could they have extended into these other mines?

Mr. Severance: The same objection.

The Witness: They were not extended.

By Mr. Dickinson:

Q. But the distance was short, was it not?

A. It depends upon where you are going to extend to, as to the distance.

Q. Was there any reason why they could not run to a mine six miles off?

A. None at all.

Q. Did they have a common rate out from there at that time?

A. They had.

Q. What was the distance from Virginia to Mountain Iron, about?

A. Straight across country it was about four miles.

Q. Mr. Gayley, could not either of those roads have built extensions into any of the mines there?

A. They could have built to California if they had wanted to.

Q. I mean, would it not have been practicable?

A. Quite so.

Q. To serve any of the mines in that territory?

A. Quite so.

Q. You spoke of certain large interests or concerns that were holding and purchasing and operating iron ore properties in that region; state whether or not prior to the formation of the United States Steel Corporation there were any iron ore properties there which were controlled or operated by interests with which John W. Gates was allied, other than the Minnesota Iron Company.

A. Gates did have a property on the Mesabi Range.

Q. What was that property?

A. I have forgotten the name of it.

Q. Sauntry, was it not?

A. Yes; the Sauntry.

Q. What became of that mine?

A. That came into the Steel Corporation through the American Steel & Wire Company.

Q. Do you know whether or not Gates and the Hill interests were co-operating prior to the formation of the United States Steel Corporation in the purchase or acquirement of iron ore properties in that region?

MR. SEVERANCE: By that do you mean does he know that of his own knowledge?

MR. DICKINSON: Yes.

MR. SEVERANCE: I object to his answering unless he knows of his own knowledge.

MR. DICKINSON: You understand that whatever I ask you, I ask you what you know yourself?

THE WITNESS: Yes.

MR. DICKINSON: Then I do not think it is necessary to remind the witness constantly.

MR. SEVERANCE: I have not reminded him constantly; it is only occasionally.

MR. DICKINSON: It is pretty often.

MR. SEVERANCE: Once in a while.

THE WITNESS: What was the question?

(By request the stenographer repeated the pending question.)

THE WITNESS: I would like to ask which Gates is referred to here.

By MR. DICKINSON:

Q. John W. Gates.

A. I do not recall whether he was or not.

Q. Do you know whether he had any traffic contracts with the Hill road?

A. I have forgotten, if I ever did know.

Q. What were known as the Moore interests at that time, prior to the formation of the United States Steel Corporation?

A. In steel plants?

Q. In ore.

A. The tin plate companies?

Q. In ore.

A. I do not recall.

Q. Do you know anything about the American Steel Hoop Company?

A. Yes.

Q. Do you know whether they acquired any ore up there?

A. A little.

Q. Prior to the formation of the United States Steel Corporation?

A. Yes.

Q. How about the National Steel?

A. They had some ore properties.

Q. What mines were they?

A. As I recall, they were interested at Iron Mountain, Michigan, in the Chapin mine, and what their interests were on the Mesabi I do not recall now.

Q. I will ask you whether or not, after the formation of the American Steel Hoop and Tin Plate Company, and the American Steel & Wire Company, there was not a great deal of competition immediately following in the purchase of iron ore properties in the Mesabi region, and whether this was not called directly to the attention of the Carnegie Company by Mr. Oliver.

A. There was some activity, but there were not large properties secured, as I recall, by either of those companies.

Q. Where were the large properties; who held them?

A. Largely by the fee owners.

Q. Who were the fee owners?

A. Generally the lumber men of that country.

Q. Can you name now any mines that were then held by fee owners, large properties, that have been since opened and operated, that were not purchased at that time or leased?

A. If you ask me to give the names of them, it is rather difficult to do at this late day.

Q. Outside of the holdings of the Hill people or the Moore people, the John W. Gates interests, the Minnesota Iron Company, the Oliver Iron Mining Company, and the Consolidated Iron Mining Company, what large mines were there then in

operation in the Mesabi Range, outside, now, of those, April 1st, 1901? I will put it as of that date.

A. Corrigan, McKinney & Company had very large operating mines.

Q. What were they?

A. Four iron ore mines.

Q. Name them. In the Mesabi region, I am calling for now.

A. Their largest one was the Commodore, and its group of mines at Virginia, and the Stephenson mine, a very large mine.

Q. Now, what other?

A. Pickands, Mather & Company were operating two mines which they had leased from the Minnesota Iron Company.

Q. Give the names of those mines.

A. It is not on the tip of my tongue. I might if I thought a while.

Q. What others? You have mentioned Corrigan, McKinney and Company and Pickands, Mather & Company.

A. I do not recall any at the moment.

Q. Did any of those mines then owned or controlled by Corrigan, McKinney & Company—I mean at the time the United States Steel Corporation was formed—afterwards go under the control of the United States Steel Corporation or any of its subsidiaries; and, if so, what were those mines?

A. They did not; they are still owned by Corrigan, McKinney & Company.

Q. Now, coming back to the Corrigan, McKinney & Company mines, that they were operating at the time the United States Steel Corporation was formed, what was the amount of the then known commercially available tonnage of iron ore controlled by them? Do not tell it if you do not know, as Mr. Severance has suggested.

A. I know it was very large.

MR. SEVERANCE: I am suggesting that he ought not to speculate about things.

MR. DICKINSON: I am not asking you to speculate; you understand that?

MR. LINDABURY: And also that you are not asking for hearsay evidence?

MR. DICKINSON: Yes. You understand, unless I put in the question that I am asking you to speculate, or asking you for hearsay, that I am asking you for what you know.

MR. SEVERANCE: That has not been your practice heretofore. Now you are warning him.

MR. COLTON: No; he said he was not to answer unless he knew.

MR. DICKINSON: I have a decided objection to that form of objection.

MR. SEVERANCE: It is merely a suggestion; not an objection.

(At the request of the witness the pending question was repeated by the stenographer.)

THE WITNESS: I do not know what the amount was. I know that they were both very large mines.

By MR. DICKINSON:

Q. I asked you this forenoon whether you and Mr. Clemson went to New York for the purpose of taking up with the Rockefeller interests some questions arising under a contract that the Oliver Iron Mining Company had with that company. Didn't you understand me to ask about that?

A. No, sir.

MR. SEVERANCE: You are mistaken; you did not ask him about that.

MR. COLTON: He asked him about going to New York.

MR. DICKINSON: Leave out about Clemson or, strike it out.

By MR. DICKINSON:

Q. Did you and Mr. Clemson meet in New York in February, 1900, Mr. Gates, president of the Lake Superior Consolidated Mines, and Mr. John D. Rockefeller, Jr., with reference to the Mesabi ore properties which had been recently acquired by the Oliver Iron Mining Company?

A. We had many conferences with Mr. Gates in 1900.

Q. Did you have a conference with Mr. Gates, Mr. Clemson

and Mr. John D. Rockefeller, Jr., with reference to complaints made by the Consolidated Iron Mines that the Oliver Iron Mining Company had acquired properties, which was claimed to be contrary to a contract that that company had entered into—either that company or the Carnegie Company acting for and in connection with it—with either the Consolidated Iron Mines or Mr. Rockefeller or Mr. John W. Gates, acting for them?

A. We never had, for the purpose mentioned.

Q. State whether or not Mr. F. T. Gates, representing the Rockefeller interests, demanded of the Oliver Iron Mining Company or the Carnegie Company or both that there should be turned over, without condition, 75,000,000 tons of ore which it was claimed by the Rockefeller interests had been acquired by the Oliver Iron Mining Company in contravention of an agreement made between the Oliver Iron Mining Company and the Lake Superior Consolidated Mines, or Mr. Rockefeller, or persons acting for them.

MR. SEVERANCE: I object to that as immaterial to any issue here.

THE WITNESS: Mr. F. T. Gates did make such a demand on the Oliver Iron Mining Company, to turn over certain ore properties acquired by them at a time when Mr. Rockefeller was not giving to the Oliver Mining Company the properties they needed; but as to the amount of tonnage involved I cannot recall.

By MR. DICKINSON:

Q. Upon what ground did he make the demand?

MR. SEVERANCE: The same objection.

THE WITNESS: That Mr. Oliver had made an arrangement with them that they would secure no properties on the Mesabi Range, the Rockefellers agreeing in turn to provide the Oliver Iron Mining Company with ore properties as they needed them. Failing to provide them, the Oliver Iron Mining Company went out and secured properties. Then Mr. Gates argued or contended that we should turn these properties back to them, and they would in turn make a deal with the Oliver Mining Company involving a very much larger tonnage of ore.

By Mr. Dickinson:

Q. You spoke in your answer of having made an arrangement with Mr. Oliver, Mr. Gates making an arrangement with Mr. Oliver; was that arrangement with Mr. Oliver personal, or was it with the sanction of the Carnegie Company?

A. It was with the Oliver Iron Mining Company, he represented the mining company.

Q. Now, answer whether or not in this he acted on his own responsibility or merely for the Oliver Iron Mining Company or with the sanction of the Carnegie Company, and by authority of the Carnegie Company.

A. He naturally represented in this proposition the Carnegie Steel Company interests as well, as far as they were interested in the Oliver Iron Mining Company.

Q. You say that there was a failure on the part of the Rockefeller people to furnish ore?

A. Ore lands.

Q. And that these mines were then bought by the Oliver Iron Mining Company for that reason; did you maintain that contention in your controversy with Mr. Gates or the interests he represented?

A. We did.

Q. What was the ground of his contention? What did he claim?

A. Naturally that he felt that he was supplying us with as much ore lands as we needed at the time.

Q. How about his claiming that your people had entered into a contract with his people that prevented you from having the right to acquire any ore properties in that region?

A. There was no contract entered into. There was an exchange of letters between the two companies.

Q. Was there an understanding or an agreement to that effect?

A. There was an understanding.

Q. There was an understanding to that effect?

A. Yes.

Q. Did he or not claim that this understanding had been violated?

A. Oh, certainly.

Q. Which contention prevailed—your contention or his?

A. We finally got all the ore properties.

Q. I understand; but was his contention admitted?

A. Let me put it this way: We turned over the properties we had acquired to the Consolidated Mines, as Mr. Gates contended, on the contemporaneous understanding that they were going to turn over and lease to the Oliver Mining Company not only these properties, but many others under the same conditions under which they were acquired, except with a traffic agreement over their road.

Q. Yes; but I want to come back to this question: whether or not, in this controversy between your people and Mr. Gates' people, his contention that you had violated your understanding was admitted.

A. I thought I just answered that.

Q. How did you answer it?

A. I ask to have my answer read.

MR. SEVERANCE: Was not this whole question committed to writing?

MR. DICKINSON: I am asking what transpired between them.

MR. SEVERANCE: That is immaterial as to what transpired between them.

MR. COLTON: Not in a conspiracy, ever; the negotiations in a conspiracy.

MR. SEVERANCE: What has the conspiracy you are claiming here to do with this matter? This has nothing to do with a conspiracy.

MR. COLTON: This is a division of territory——

MR. DICKINSON: Do you want to make an objection?

MR. SEVERANCE: I thought it was all in writing somewhere.

By MR. DICKINSON:

Q. How did you think you had answered that question, Mr. Gayley?

A. I would like to have my answer read.

Q. Answer it now, please.

MR. SEVERANCE: I object to cross-examination of the witness by counsel. The witness has already answered it.

THE WITNESS: I would just recite what I have already recited in my previous answer.

(By request, the stenographer repeated the answer referred to as follows:)

"A. Let me put it this way: We turned over the properties we had acquired to the Consolidated Mines, as Mr. Gates contended, on the contemporaneous understanding that they were going to turn over and lease to the Oliver Mining Company not only these properties, but many others under the same conditions under which they were acquired, except with a traffic agreement over their road."

By MR. DICKINSON:

Q. I do not think that answers the question. The question I asked you is whether or not in this negotiation and settlement your company acted upon the assumption that Mr. Gates' contention that you had violated the agreement was right; that he was right in that contention.

MR. SEVERANCE: I object to that as entirely immaterial. The question should be as to what was done by the parties. That Mr. Gayley has repeatedly testified to.

THE WITNESS: I have already stated that we turned those properties back to them. That may be construed as an admission that their contention was right. We turned the properties back, but we did not turn them back until we knew they were going to be returned to us.

By MR. DICKINSON:

Q. You turned them back in what way? You conveyed them to him?

A. We conveyed them to them.

Q. And then got a lease on them?

A. And then got a lease back on the same terms of royalty, with a traffic arrangement or contract attached.

Q. Did that provide for a rebate?

A. No.

MR. SEVERANCE: Quite the contrary.

By MR. DICKINSON:

Q. Did you make any agreement with the Rockefeller peo-

ple which provided, directly or indirectly, that they would protect you in the rates, even if the rates went higher, so that you would not have to pay more than the then current rate?

A. The only arrangement I know with them was that if the railroad rates went down, the difference should be added to the royalty. There was no expectation of the rates ever going higher.

Q. Were the rates high or low?

A. Just exactly right.

Q. I will ask you whether or not you did not state to your people that the ore could be carried at a profit at a forty-cent rate.

A. I do not recall.

Q. What do you say now about that fact?

A. There is a profit, of course, to the railroads, simply as a carrying charge and cost. That makes no provision, however, for the peculiar situation in the Northwest, for the extension and renewal of docks and their approaches in order to take care of the ore.

Q. So far as concerns the person who pays the carriage, was it or not your judgment that a forty-cent rate at that time was a reasonable rate?

A. It would not have been a reasonable rate for the railroads to equip its road in order to accommodate its customers.

Q. I mean a reasonable rate to charge for the service rendered.

MR. SEVERANCE: Do you mean including the investment?

MR. DICKINSON: I mean a reasonable rate to charge for the service rendered.

MR. SEVERANCE: He has answered that three times.

THE WITNESS: If you mean a reasonable profit on the cost of carrying the ore only, without keeping your railroad and dock in repair, and letting them gradually run down hill, it might for a year or two years have returned a profit, but eventually it would have been a very expensive operation.

By Mr. Dickinson:

Q. I will read you from page 1308 of Volume III of Government Exhibits a communication from you dated November 10, 1899, to the board of the Carnegie Steel Company, Limited. (Reading)

"*Fourth*: The royalty under the Oliver lease which covers eleven per cent. of all the Oliver Co.'s Missabe ore is fifty cens per ton, or 60 per cent. higher than the next highest royalty on the Range, and five hundred per cent. higher than the lowest.

"By the terms of the Consolidated leases, the royalty must be raised by as much as the rail rates to Lake Superior are reduced.

"*Fifth*. Ore can be carried from the Range to Lake Superior on a 40-cent rate at a good profit. If it is ever so carried, then the royalty on twenty-five per cent. (25) of the Oliver Co.'s ore is advanced forty (40) cents per ton (under present leases). If the rate remains as it is, then the Federal Steel Company has an advantage over the Carnegie Steel Company on its Missabe ores, of Forty (40) cents per ton."

State whether or not you made that statement, believing it to be true.

Mr. Severance: That is objected to on the ground that counsel has already drawn out from his own witness his opinion on the fairness of the ore rates. The witness has also stated frankly to counsel that as to the mere cost of conducting the transportation forty cents would probably have shown a profit. I object to his being cross-examined, either in this manner or any other, on these statements.

The Witness: I do not recall having made that statement.

Mr. Lindabury: Now that he has answered, Judge, I call your attention to the fact that he has already stated that he did not remember any such statement as that.

By Mr. Dickinson:

Q. You have no recollection about it?

A. I have not.

Q. I will get you to look at the whole communication, be-

ginning on page 1307, and see then if you recollect about it. (Handing book to witness.)

MR. SEVERANCE: I object to refreshing his recollection in this manner from printed minutes of a company which is not a party to the action.

By MR. DICKINSON:

Q. Do you have any recollection of it now?

A. Evidently I made that communication to the board.

MR. SEVERANCE: That is not the question.

MR. LINDABURY: We move to strike that out.

MR. SEVERANCE: Yes. The question is whether you remember making it. That is the question.

THE WITNESS: I do not recall, now, making it.

MR. LINDABURY: I think there should be an understanding, that this witness should understand that he is not to assume the accuracy of anything that is in that book.

MR. COLTON: He can have the original book if he wants it.

MR. LINDABURY: He is not to assume the accuracy of anything there.

MR. DICKINSON: You mean of anything in this printed book?

MR. LINDABURY: Or anywhere else.

MR. DICKINSON: But there is a stipulation that this is a correct copy of the Carnegie minutes. You do not raise that point?

MR. LINDABURY: I mean that the witness must testify of his recollection.

MR. DICKINSON: Hasn't he?

MR. LINDABURY: No.

MR. DICKINSON: Yes; he has testified that he did not recollect.

MR. SEVERANCE: He testified first that he evidently said it.

Mr. Lindabury wants it understood that he can not give that kind of testimony. He is here to testify from his own recollection.

MR. DICKINSON: Has he not testified to his recollection?

MR. LINDABURY: We will not disagree, Judge. Understand me——

MR. DICKINSON: I think he was asked the question and said he did not recollect.

MR. SEVERANCE: Certainly.

MR. DICKINSON: Then what are we talking about?

MR. LINDABURY: It is about the future——

MR. DICKINSON: Oh!

MR. LINDABURY: We do not think you can refresh the recollection of the witness in this way; but you disagree——

MR. DICKINSON: Evidently I did not refresh it.

MR. LINDABURY: Please notice, for a moment, what I am saying, Judge.

MR. DICKINSON: Certainly.

MR. LINDABURY: That after a witness has looked at a paper that he has a right to use to refresh his recollection, if it does not really refresh his recollection, you are not entitled to have it.

MR. DICKINSON: He said he did not recollect, did he not?

MR. SEVERANCE: That was not his first answer.

MR. DICKINSON: I know; but that was his second answer.

By MR. DICKINSON:

Q. Coming back to the contention of Mr. Gates in regard to his demand for the turning over of those ore properties, I call your attention, at page 1323 of Volume III of the Government Exhibits, to the following communication addressed to the President—

MR. SEVERANCE: I wish to object to any attempt to refresh the recollection of the witness in this manner.

MR. DICKINSON: It is perfectly competent to refresh it if I can.

MR. SEVERANCE: And I object to the question as leading. Why do you not ask him about the questions, instead of reading him a lot of stuff?

MR. DICKINSON: I want to see if I can refresh his memory.

MR. SEVERANCE: Perhaps it does not need any refreshing. Why not ask him first? There is no rule on earth that permits this sort of examination.

MR. DICKINSON: I read:

"The following communication, addressed to the Presi-

dent by MM. Gayley and Clemson, under date of 20th February, 1900, was read:

"'During the past week Mr. Clemson and myself met in New York, Mr. Gates, President of Lake Superior Consolidated Mines, and Mr. John D. Rockefeller, Jr., with reference to the Mesaba ore properties we had recently acquired by purchase and lease. At our first conference there was presented to us a review of the situation and preliminary papers bearing on the leasing of the Mountain Iron Mine in 1896. After a careful examination of the original papers, (of which Mr. Gates alone appears to have a copy), with memoranda thereon by Mr. Carnegie, Mr. Leishman and Mr. Curry, we are entirely of the opinion that we have no grounds whatever to justify our purchase of these properties. The demand of Mr. Gates that we turn over to them without conditions the 75,000,000 tons of ore we had secured was fully within the letter and spirit of the agreement entered into. It is difficult to play a game of bluff when the other party holds the cards, and you know it; nevertheless, we have been able to retain 60,000,000 tons out of the 75,000,000 tons that we acquired during the past year."

State whether or not you and Mr. Clemson made that report.

A. We did.

Q. And were the facts therein stated by you correct?

A. Precisely.

Mr. Severance: That is just what he testified to before, except that he did not have that word "bluff" in.

By Mr. Dickinson:

Q. I asked you about a rebating agreement, Mr. Gayley. Did you understand me to refer to the new agreement that grew out of this interview, or to the original agreement that was in operation at the time you and Mr. Clemson had the interview?

A. I know of nothing about rebating.

Q. You know nothing about any provisions of that sort?

A. I do not.

Q. Now, Mr. Gayley, please look at Government Exhibits Vol. III, pages 1295 to 1297 inclusive. I will not read it to you,

as it will take too long, and it is all copied in the record already. Also turn to pages 1323 and 1324 of the same book and examine them.

A. What is the question?

Q. The question is with regard to the clause beginning on page 1295, at the bottom line, as follows: "Replying to your fear that in the proposed deal, other consumers, competitors of yours, might, at some time, possibly secure ore through other channels of transportation, or our own, cheaper than yourselves: We might perhaps discuss an arrangement by which we shall agree that, barring mining costs, which would be under your own control, and the risk of which you must assume in competition with others, and barring royalty, which cannot be changed (below 25c. for all but MM.), we are to undertake to guarantee that you shall secure such of your own ores as you mine from the mines under consideration and transport over the Duluth, Missabe & Northern Railway, as cheap—quality for quality—as any other consumer. This guarantee to afford *the necessary rebate* (the rebate provided for only) on the amount of (such cheaper) ore delivered to your competitors at Lake Erie ports. This will not apply to any possible (present or) future competitors who may own their own rail roads or vessels, the idea being that your ore shall not cost you at Lake Erie ports more than other ore costs other competitive *consumers* (not transporters)—quality for quality—barring mining costs and royalty."

State whether or not that clause was under consideration in that interview and was part of the agreement that you had under consideration.

A. What interview?

Q. Between you and Mr. Clemson, Mr. Rockefeller and Mr. Gates.

A. It was not.

Q. On page 1,324, to which I have called your attention, occurs the following:

"They have also insisted on eliminating the special guaranty clause for rail freight in present contract, reading as follows:

" 'The lessor covenants that if, during the term of this lease, while such lower rail rate shall be current as above

stated, any actual competitive consumer of iron ore mined upon the Missabe Range shall in fact acquire such ores at Lake Superior ports cheaper than the cost to the lessee at such ports of the ores mined by the lessee upon the demised premises, the lessor will pay, ton for ton, to the lessee, a sum equal to the gain per ton accruing to such consumer as against the lessee by virtue of such cheaper rail rate on every ton of iron ore mined upon the Missabe Range consumed by such competitor, up to the total amount of the lessee's production from the demised premises during the currency of such lower rail rate'."

Was such clause considered by you?

A. I cannot recall in detail now the various points that were considered by us at that time, as a matter of memory.

Q. That is all I am asking for. State whether or not, pursuant to any understanding or agreement with any other concern independent of it, the Carnegie interests turned down the purchase of ore properties which were pressed upon them; and whether they, in pursuance of such agreement or understanding, took steps to make it known that they were not open to negotiations looking to the acquisition of ore lands in the Missabe Region.

A. At what time?

Q. Prior to the formation of the United States Steel Corporation.

A. They had prior to the time of acquiring properties, with a thought that the Rockefeller interests were not supplying them with sufficient ore lands; and then again after they had made their final contract with the Rockefeller interests.

Q. And was that in pursuance of an agreement or understanding with the Rockefeller people?

A. In the first instance mentioned it was in pursuance of an understanding with the Rockefeller people, and in the second instance mentioned it was because the Oliver Mining Company had in its latest deal with the Rockefellers secured a sufficient quantity of ore, as I recollect.

Q. There was, however, prior to that time an understanding or agreement with the Rockefeller interests that you would keep out of the market for the purchase of iron ores in that region?

A. I have already stated that several times.

(Thereupon, at 4 o'clock, p. m., an adjournment was taken to Wednesday, March 5, 1913, at 2 o'clock, p. m.)

FORTY-FIFTH DAY.

EMPIRE BUILDING,

71 BROADWAY, NEW YORK CITY.
Wednesday, March 5, 1911.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. SEVERANCE, MR. REED, MR. KELLOGG and MR. CUTHELL.

STIPULATION

IT IS HEREBY STIPULATED by and between the Petitioner and the Defendants represented by Messrs. Lindabury, Depue & Faulks, as follows:—

The following documents, to-wit:—

Agreement of January 23, 1899, between David B. Oliver and James B. Oliver, on the one hand, and John W. Gates and Isaac L. Ellwood, on the other hand;

Agreement of January 21, 1899, between W. A. Laidlaw, on the one hand, and J. W. Gates and I. L. Ellwood, on the other hand;

Agreement of December 31, 1898, between Herman Belmer and others, on the one hand, and J. W. Gates and others, on the other hand;

Agreement of January 14, 1899, between Albert Henley and J. A. Henley, on the one hand, and J. W. Gates and I. L. Ellwood, on the other hand;

Price announcement of the American Steel & Wire Company of January 9, 1904, addressed to jobbers;

Price announcement of the American Steel & Wire Company of August 16, 1904, addressed to jobbers;

Are offered in evidence in behalf of the Petitioner, subject to objection to competency and relevancy. That said

agreements were entered into by the parties therein named and said price announcements made to jobbers.

Dated New York, March 4, 1913.

(Signed) J. M. Dickinson,
Henry E. Colton,
Barton Corneau.
Special Assistants to the Attorney-General.
Lindabury, Depue & Faulks.

The documents enumerated in the foregoing stipulation were marked Government Exhibits Nos. 382 to 387, and will be found in the Volume of Exhibits.

GEORGE WELWOOD MURRAY

was called as a witness on behalf of the United States, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By Mr. Colton:

Q. I hand you a paper which has been marked "Government Exhibit No. 378 for identification," being a letter of December 4, 1896, purporting to be signed by John G. A. Leishman and Henry W. Oliver. Do you know the signatures to that document?

A. I do.

Q. Do you know that agreement to have been entered into?

Mr. Severance: Just a moment.

The Witness: I do not know it as an agreement.

By Mr. Colton:

Q. As a letter?

Mr Severance: What do you mean? What do you want to know?

The Witness: What I say is this: I produce this from the files of Mr. John D. Rockefeller. That is what you want, I suppose?

MR. COLTON: Yes. I withdraw my last question.

By MR. COLTON:

Q. You produce this from the files of Mr. John D. Rockefeller?

A. I do.

Q. Do you know the signatures to it?

A. I do; both of them.

Q. The parties purporting to sign are the parties in question?

A. They are.

Q. What positions did those parties whose signatures appear there hold at that time, as shown in that letter?

A. They purport to be Mr. Leishman, the president of the Carnegie Steel Company, Limited, and Mr. Oliver signing individually.

Q. Did you know them as such?

A. I did.

MR. SEVERANCE: Do you mean to ask whether he knew Mr. Oliver individually?

MR. COLTON: I did.

I offer in evidence the paper heretofore marked "Government Exhibit No. 378 for identification."

MR. SEVERANCE: I object to said exhibit on the ground that the same is irrelevant and immaterial.

(The paper referred to was thereupon marked "Government Exhibit No. 378, Murray, March 5, 1913.")

MR. SEVERANCE: You wish a stipulation to appear on the record, do you not, that Mr. Murray can withdraw the original of that paper and substitute a copy?

MR. COLTON: Yes.

MR. SEVERANCE: That will appear on the record, then.

MR. REED: The record does not show what the paper is, as yet.

THE WITNESS: It is a letter from Mr. Leishman as president, and Mr. Oliver, to Mr. Rockefeller, under date of December 4, 1896, which I produce under subpoena.

MR. COLTON: I ask to have marked for identification a letter purporting to be addressed to Messrs. John D. Rockefeller

and J. P. Morgan & Company, and signed H. C. Frick, approved, etc., dated March 15, 1901.

(The paper referred to was thereupon marked "Government Exhibit No. 373-374 for identification.")

By Mr. Colton:

Q. Do you know the signatures to that document?

A. I produce this under subpoena from the files of Mr. John D. Rockefeller. I do not know the signature, intimately, of Mr. Frick or of J. P. Morgan & Company. I do not know what partner of the firm signed that. I do know well the signature of Mr. John D. Rockefeller, Jr., and this is his signature. I have no doubt of the others, and it was produced from the files of Mr. Rockefeller.

Mr. Colton: I ask that the paper as thus identified be printed.

Mr. Reed: What is it you ask?

Mr. Dickinson: He has not offered the paper in evidence. He thinks it may not be necessary, in view of a stipulation that we have that has been signed by Mr. Murray and has been handed to Mr. Lindabury. If that is signed, this would just encumber the record. Mr. Colton simply wants to get it identified at this time.

Mr. Colton: Let it be typewritten for identification and put in the volume of exhibits. Then it can be offered in evidence at any time.

The Witness: I should like to take the original with me and leave a copy.

Mr. Dickinson: By consent of counsel, Mr. Murray takes the original with him and leaves a copy. You consent to the withdrawal of the original?

Mr. Severance: Yes.

By Mr. Colton:

Q. I show you paper dated November 18, 1896, memorandum tentative and provisional, also paper purporting to be a lease from the Mountain Iron Company to the Oliver Mining Company of the Mountain Iron and Rathbun Mines, dated December 1, 1896, "An agreement made this second day of December, 1896, between the Oliver Mining Company and Bessemer Steamship Company," and a letter dated December

12, addressed to the Lake Superior Consolidated Iron Mines, New York City, and a letter dated March 11, 1898.

MR. SEVERANCE: A letter from whom to whom?

MR. COLTON: Memorandum signed by the Bessemer Steamship Company, by F. T. Gates, President, and by Oliver Mining Company, by Henry W. Oliver, President.

(By request, the stenographer repeated first part of the pending question, as follows):

"I show you paper dated November 18, 1896, memorandum tentative and provisional, also paper purporting to be a lease from the Mountain Iron Company to the Oliver Mining Company of the Mountain Iron and Rathbun Mines, dated December 1, 1896—"

THE WITNESS: Pardon me for interrupting, but this is not a lease, but an agreement with respect to the escrowing of a lease.

MR. SEVERANCE: Why not identify the papers by exhibit numbers?

MR. COLTON: Yes. Let them be marked.

MR. SEVERANCE: Let them be marked separately, I suggest, with exhibit numbers.

MR. COLTON: Yes.

(The papers referred to where thereupon numbered Government Exhibits 375 to 381, inclusive, for identification."

By MR. COLTON:

Q. Are the papers, as described above, marked Government Exhibits for identification 375 to 381, the only papers which you produced in response to the following subpoena:

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To

JOHN D. ROCKFELLER;
JOHN D. ROCKFELLER, JR.; and
F. T. GATES.

GREETING:

WE COMMAND YOU, That all and singular business and excuses being laid aside, you and each of you appear and attend before Honorable Henry P. Brown, a Special Examiner, duly

appointed by Honorable George Gray, Honorable Joseph Buffington and Honorable John B. McPherson, United States Judges for the District of New Jersey, at a hearing to be held by said Special Examiner, at Room 720, Custom House Building, New York City, N. Y., on the 20th day of February, 1913, at 10:30 o'clock in the forenoon, to testify and give evidence in a certain cause between the United States of America and the United States Steel Corporation and others, now pending undetermined in the District Court of the United States for the District of New Jersey, on the part of the United States, and not to depart without the leave of the said Special Examiner, or of counsel for the United States; and that you bring with you and produce at the time and place aforesaid the following papers:

ALL contracts, agreements or written understanding entered into between John D. Rockefeller, John D. Rockefeller, Jr., Lake Superior Consolidated Iron Mines, the so-called Rockefeller ore interests, and F. T. Gates, or any of them, on the one hand, and Andrew Carnegie, the Carnegie Steel Company, Limited, the Carnegie Steel Company, the Carnegie Company, the Oliver Mining Company, the so-called Carnegie interests, Henry W. Oliver, James Gayley, John Leishman, or any of them, on the other hand, relating to ore, during the period 1895 to 1901, inclusive; together with all memoranda and papers relating to the same.

ALSO, ALL contracts, agreements or written understandings entered into between John D. Rockefeller, John D. Rockefeller, Jr., the Lake Superior Consolidated Iron Mines, the so-called Rockefeller ore interests, or any of them, on the one hand, and J. P. Morgan, J. P. Morgan & Co., the United States Steel Corporation, or any of them, on the other hand, in respect to the sale of the stock of the Lake Superior Consolidated Iron Mines, or in respect to the sale of the so-called Rockefeller ore interests, at or about the time of the formation of the United States Steel Corporation.

Now in your possession or under your control.

For a failure to attend you and each of you will be deemed guilty of a contempt of Court and liable to pay all loss and damage sustained thereby to the party aggrieved, and to forfeit Two Hundred and Fifty Dollars, in addition thereto.

WITNESS, The Honorable the Judges of the District Court of the United States for the Southern District of New York, at the City of New York, New York, the sixth day of February, 1913.

(SEAL.)

ALEC GILCHRIST, JR.,
Clerk.

HENRY A. WISE,
United States Attorney.

Feby. 10, 1913. Service admitted

JOHN D. ROCKEFELLER
JOHN D. ROCKEFELLER, JR.
F. T. GATES
by MURRAY, PRENTICE & HOWLAND,
Attys.

A. With the addition of the paper which has been marked Government Exhibit 373-374, dated March 15, 1901. With that addition they are the only papers.

I ought to add, in this connection, that I directed that a thorough search be made in Mr. Rockefeller's files, immediately on the receipt of the subpoena, and am informed by his secretary that these are the only papers upon his files responsive to the subpoena; and I believe that to be true. That explanation I make as the reason why they are the only papers produced.

Q. Who is Mr. Rockefeller's secretary?

A. Mr. Edward V. Cary. I am Mr. Rockefeller's counsel, and I am perfectly willing to be responsible for the search, as far as that is concerned. I know Mr. Cary, and believe in the thoroughness of the search. He could not tell you any more than I have.

Q. As counsel have you authority to institute such a search?

A. I have authority to consult Mr. Rockefeller and, with his backing, to give such a direction; and that was true in this case.

Q. Was it done in that way in this instance?

A. It was done in that way.

MR. DICKINSON: It is agreed by counsel that the statement made by Mr. Murray, and the facts shown by him, shall be regarded, for the purposes of this case, as a sufficient search for the Rockefeller papers, and that the production and testimony of Mr. Edward Cary are waived.

(The witness was thereupon excused.)

JAMES GAYLEY,

a witness previously sworn on behalf of the United States, was recalled and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. DICKINSON:

Q. Without encumbering the record by copying it in, or by reading it to you, for the purpose of making further inquiries I will ask you to look at the report which appears on pages 1,119 *et sequitur*, Government Exhibits, Volume III, made at a meeting of the Board of Managers of the Carnegie Steel Company, July 19th, 1898, by Mr. Oliver, and I call your special attention to page 1,120, which I will ask you to read over, where it says: "(1st) The arrangement you and I made," etc.; and also pages 1122 and 1123, beginning with the words "My estimate of cost of the Pioneer ore," etc., down through the words "delivered Pittsburg". I will ask you what at that time was the established freight rate from the Vermillion Range to Lake ports?

A. One dollar; I think 90 cents from Minnesota or Tower Mines, and $1 from the Ely mines; that is in general the Vermillion Range.

Q. I will ask you whether or not, as a result of that arrangement, the Carnegie Company got a rebate on that freight rate; and if so, what was it, and what did it amount to.

MR. SEVERANCE: I object to that as immaterial and incompetent.

THE WITNESS: I do not think they did.

By Mr. Dickinson:

Q. Was that arrangement as set forth there operated under?

A. Whether it was or not I do not know, and I do not recall their having received any rebate, if it was operated under. I mean by that that there was an actual rebate made to the Oliver Mining Company.

Mr. Severance: You mean that there was not an actual rebate made to the Oliver Mining Company?

The Witness: I mean that I do not recall that there was an actual rebate paid.

By Mr. Dickinson:

Q. Directly or indirectly, the net result of it was that there was a rebate amounting to approximately 30 cents a ton of which the Carnegie Company got the benefit, as the result of that transaction?

A. That was evidently the intention, as set forth in this recommendation.

Q. Was that agreement made or entered into?

A. My recollection is that there was an arrangement made later.

Q. When?

A. I think a year later.

Q. Between whom?

A. Between the Carnegie Steel Company and the Federal Steel Company.

Q. For hauling over what road?

A. The Duluth & Iron Range.

Q. What was the effect of that in results, so far as rebates were concerned?

Mr. Severance: Two years later; this was in 1898.

The Witness: Two years later, 1900.

By Mr. Dickinson:

Q. About June, 1900?

A. About that time, yes.

Q. I will call your attention to and ask you to examine the extracts from the Carnegie minutes as they appear on pages 439-445 of Government Exhibits, Volume II.

MR. SEVERANCE: I object to the witness being shown these minutes, as an improper way of refreshing his recollection, and as incompetent and immaterial, and I object to any testimony based on such inspection of the minutes.

By MR. DICKINSON:

Q. State whether or not you and Mr. Gary had any negotiations leading up to that contract.

A. I had no negotiations with Judge Gary.

Q. Did you participate in the negotiations leading up to that contract?

A. With Judge Gary?

Q. With anyone?

A. I evidently did.

Q. With whom?

A. With Mr. Oliver, and reported the proposition to the Carnegie Steel Company.

Q. Who represented the Federal Steel Company in reference to that report, where you say, "Last week at an informal meeting we discussed the matter of making a contract between the Federal Steel Company, The Carnegie Company and the Oliver & Snyder Steel Company"?

A. That was an informal meeting of the directors of the Carnegie Steel Company.

Q. No Federal representative there at that meeting?

A. No.

Q. Who made the suggestion referred to there, where you say, "The suggestion has been made, in order to avoid the appearance of rebating freight, that we make a contract between the two New Jersey Companies, Carnegie and Federal."

MR. SEVERANCE: I object to that as incompetent, immaterial, irrelevant and leading.

A. I do not know who made that suggestion.

By MR. DICKINSON:

Q. I call your attention to page 440, where you say, "Judge Gary thinks that if we make a contract as now proposed they can find a way to pay us the amount due us, which approximates $200,000, and make the further payments or rebates required."

MR. SEVERANCE: I object to that.

By MR. DICKINSON:

Q. Where did you get that information upon which you made that statement?

MR. SEVERANCE: I object to that on the ground that, the witness having already stated that he had no negotiations with Judge Gary concerning the matter, his answer must necessarily be hearsay and therefore incompetent; and I object to it on the further ground that the question is irrelevant and immaterial.

THE WITNESS: It was communicated to me by Mr. Henry W. Oliver.

By MR. DICKINSON:

Q. Was any arrangement made by which you should get the $200,000, and did you get it?

A. Not that I recall.

Q. Did you get any rebates under this agreement?

A. I cannot recall any from memory; it would have been transacted, perhaps, through the Treasurer of the Company, and it would not have come before me.

Q. You mean the actual payments?

A. Actual payments.

Q. I will ask you, though, as acting in the capacity in which you were then acting at times, as an alternate director of this company, whether it was a part of your knowledge officially that your company did get rebates under this agreement.

MR. SEVERANCE: I object to that as incompetent, irrelevant and immaterial.

THE WITNESS: Does that refer to the agreement of 1900?

MR. SEVERANCE: No. He is asking you whether it came to your knowledge officially that they received rebates under that agreement.

THE WITNESS: Of 1900?

MR. SEVERANCE: I object to it on the further ground that the witness has already stated that he has no knowledge of any such rebates being paid.

THE WITNESS: I have no knowledge of rebates being paid. If there had been, and if it had been mentioned by the treas-

urer of the company in an informal way at the meeting, I cannot remember back now any statement to that effect.

By Mr. Dickinson:

Q. Is your mind addressed merely to the question of the actual payment of the particular money? Is that what you have in mind when you are answering that question?

A. My answer is upon the point of whether I have definite knowledge of their having received directly rebates from the Federal Steel Company.

Q. I will ask you whether or not, in your official capacity in connection with the company, it was known to you that your company at that time was operating under an agreement by which it was receiving rebates.

Mr. Severance: I make the same objection to that. The witness has already answered.

The Witness: Of what time?

By Mr. Dickinson:

Q. Under that arrangement of June, 1900.

Mr. Severance: The witness has already stated repeatedly that he has no knowledge of any rebate being paid under that agreement, a copy of which purports to be printed in the record. I do not see that it makes it any stronger for him to say it four or five times.

By Mr. Dickinson:

Q. I will call attention especially to this: I am not asking, and I am not eliciting the information that you were actually present when any payment was made, or that you actually got any report as to some particular payment that was made, but I am asking you whether you at that time had knowledge, as an officer of that company, that that company had entered into and was operating under a contract under which it was receiving rebates.

Mr. Severance: I object to that on the ground that in view of counsel's own explanation it is clear that he is asking for hearsay, the witness having already stated that he has no special knowledge on the subject. This question now calls for

hearsay, and it is therefore objectionable, and I object to it as incompetent, irrelevant and immaterial.

MR. DICKINSON: I am asking a man who was acting in the capacity of director of that company, a fiduciary of the company, controlling the affairs of that company for its stockholders, whether or not he knew at that time that they had a rebate contract and operated under it and received rebates.

MR. SEVERANCE: I heard the explanation, which is no different from the one that was made before, and in view of the fact that it was made so emphatically I will renew my objection that counsel is endeavoring to secure hearsay evidence, the witness having already stated that he had no personal knowledge on the subject. I object to it for the reason that it is incompetent and immaterial.

MR. DICKINSON: I wish to enter a protest against the reiterated characterization of the questions by counsel, the tendency being to suggest to the witness that he do not answer the questions.

MR. SEVERANCE: I desire to state on the record, for the benefit of counsel, that he quite misunderstands me.

MR. DICKINSON: I am——

MR. SEVERANCE: Just a moment. Let me finish. I have no desire whatever to suggest to the witness that he shall not answer, and if I did suggest it, I know he would not comply with the suggestion. I never had any such thought in my mind.

MR. DICKINSON: I would like you to answer that question.

THE WITNESS: The Carnegie Company entered in July into a contract by which they were to receive a rebate; so far as I know or recall they operated under that contract, but as to whether there were actual payments of rebates made to the Carnegie Company, I am not prepared to say, because I do not know.

By MR. DICKINSON:

Q. You have not actual knowledge of the actual payments being made?

A. I have not.

Q. But your understanding was that there was an agreement that was being operated under?

A. We were operating under that agreement.

Q. And you understood that as a director of the company?

A. It was entered into by the company to be carried out as such.

Q. And your understanding was that it was being carried out?

Mr. Severance: I object to the witness testifying to anything except matters that came within his own knowledge. The witness has repeatedly stated that he has no knowledge himself of any rebates being paid. I make the further objection that it is entirely irrelevant and immaterial to any issue in this case, whether or not such rebates were paid.

Mr. Dickinson: Please answer the question.

The Witness: My understanding is that this contract, like every other contract entered into by the Carnegie Steel Company, was being carried out.

By Mr. Dickinson:

Q. What was the amount of that rebate?

Mr. Severance: I object to that as not being the best evidence. Counsel have already produced in the record what purports to be a written agreement, and that is the best evidence. I make the further objection that it is irrelevant and immaterial.

Mr. Dickinson: Do you admit that the written agreement correctly sets forth the understanding?

Mr. Severance: I do not, nor do I admit that the agreement was ever signed by officers of the Carnegie Steel Company.

Mr. Dickinson: Then that makes entirely competent what I am saying or asking.

By Mr. Dickinson:

Q. What was the amount of rebate that you understood the contract provided for that was operated under?

Mr. Severance: I object to that on the ground that the witness has already stated that he did not conduct the negotiations for this agreement; they were conducted, whatever they were, by Oliver, and therefore his knowledge must be merely hearsay. I object to it as irrelevant and immaterial.

(By request of the witness the pending question was repeated.)

MR. SEVERANCE: I also object to it as asking for the understanding of the witness.

THE WITNESS: The effect of the contract was to make a rate of 60 cents a ton to the Lakes.

MR. DICKINSON: Instead of what?

THE WITNESS: Instead of a dollar.

By MR. DICKINSON:

Q. To what territory did that contract apply?

MR. SEVERANCE: I make the objection that that is not the best evidence; it appears from the testimony already introduced by the complainant that this was a written agreement, and therefore the written agreement is the best evidence. I also object to it on the ground that it is immaterial and irrelevant to any issue in the case.

THE WITNESS: That applied only to the mines in the Ely District.

By MR. DICKINSON:

Q. Is that in the Vermillion Range?

A. The eastward extension of the Vermillion Range.

Q. Did that cover the Mesabi east of the Duluth & Iron Range Railroad?

A. There was no ore east of the Iron Range Road on the Mesabi Range.

Q. I will call your attention to page 444 of the Minutes of the Carnegie Company, Volume II of Government Exhibits, the meeting of July 9, 1900, which recites as follows:—

MR. SEVERANCE: I object to refreshing the witness' recollection by reading from minutes. I object to reading from minutes to the witness as part of the question, on the ground that it is leading, and on the further ground that it is irrelevant and immaterial.

MR. DICKINSON: I will read as follows, page 444 and 445:

"MR. SCHWAB: Can a tariff rate be named to any one that would operate to our disadvantage?

"MR. GAYLEY: Not unless the open tariff rate goes below 60 cents. When the tariff rate goes below one dollar the

amount of our rebate is reduced the same amount and when the tariff rate is increased our rebate is increased in like amount.

"MR. SCHWAB: This agreement really fixes the rate at 60 cents per ton, no matter what the tariff rate may be, on a basis of one dollars tariff rate would mean a rebate of about $200,000.00 on last year's business; I think the agreement is all right.

"MR. GAYLEY: So do I. The $200,000.00 comes five-sixths to The Carnegie Company and one-sixth to the Oliver and Snyder Steel Company; that was the only basis on which we could get the matter fixed, the Federal Steel Company and The Carnegie Company both being New Jersey corporations. The Carnegie Steel Company pays one dollar per ton ore freight currently, and the Carnegie Company gets the rebate quarterly."

I will ask you whether or not this statement as to the amount sets forth your understanding of the facts as stated at that time.

MR. SEVERANCE: I object to that as leading, incompetent, irrelevant and immaterial, and asking for the conclusion of the witness and not his knowledge.

THE WITNESS: I do not quite understand the question.

(The pending question was repeated by the stenographer.)

THE WITNESS: The amount stated is $200,000.00 coming to the Carnegie Company and the Oliver Company, on the basis that half a million tons product with a rebate of 40 cents a ton would represent $200,000.

By MR. DICKINSON:

Q. I will ask you if that was your understanding then of the amount?

MR. SEVERANCE: I make the same objection.

A. That was stated to me by Mr. Schwab, evidently on a tonnage of 500,000.

By MR. DICKINSON:

Q. And Mr. Schwab did make that estimate, did he?

MR. SEVERANCE: The same objection.

THE WITNESS: I assume so; it is on the record here.

MR. SEVERANCE: I move to strike out the answer on the ground that it appears that the witness is not testifying from his knowledge, but reading something from a record, which any of us could do as well.

By MR. DICKINSON:

Q. Was that arrangement made for payment direct between the Carnegie Company and the railroad company; or if not, what different arrangement was made as to payment, or through what companies were the payments to be made, and why?

MR. SEVERANCE: I object to that as incompetent, and not the best evidence. Counsel has already read from what purports to be the record, the facts in reference to it, and I object to it as irrelevant, incompetent and immaterial.

MR. DICKINSON: I understand that counsel, while he objects on the score that I read what purport to be the facts, will not admit that the contract was sufficiently proven. We have called for the written contract and it has not been produced; now I am asking Mr. Gayley a question which I think under that state of facts is entirely competent. Please read the question.

(The pending question was repeated by the stenographer.)

THE WITNESS: Payments were to be made by the Federal Steel Company to the Carnegie and the Oliver & Snyder Steel Companies.

By MR. DICKINSON:

Q. But the ore was to be carried by the Duluth & Iron Range Railroad Company?

A. It was.

Q. Why was that arrangement made in that way?

A. I can not tell you why.

Q. I notice in this report made by you that this is said, on page 439: "The suggestion has been made in order to avoid the appearance of rebating freight that we make a contract

between the two New Jersey companies, Carnegie and Federal."

I will ask you whether or not that is a fact.

MR. SEVERANCE: That is objected to as leading, incompetent, irrelevant and immaterial, and not the way to refresh the recollection of the witness. He has already testified that he does not know the reason.

THE WITNESS: The contract that was authorized by the Carnegie Steel Company was with the Federal Steel Company.

By MR. DICKINSON:

Q. Yes, but was that made in that way to avoid the appearance of making a rebate?

MR. SEVERANCE: That is objected to as immaterial and incompetent.

THE WITNESS: The legal reasons for making it in that way I am not competent to inform you upon.

By MR. DICKINSON:

Q. Was it your understanding at that time, as a representative of the Carnegie Company, that it was made in that way for that purpose?

MR. SEVERANCE: The witness has already stated that he is not able to state the reasons that actuated the companies in making it this way. The question is objected to as irrelevant and immaterial.

THE WITNESS: I simply reported to the board of the Carnegie Steel Company the report that was made to me by Mr. Oliver, after conferring with various interests as to the desirable way of carrying out the arrangement.

MR. SEVERANCE: I move to strike out the entire answer of the witness as not responsive, and as clearly hearsay, as he has stated that he got all his information from Mr. Oliver.

By MR. DICKINSON:

Q. Mr. Oliver was representing the Carnegie Company in the matter of ore arrangements, was he?

A. He was representing the Oliver Iron Mining Company.

Q. That was largely controlled by the Carnegie Company?

A. Five-sixths of it was so controlled.

Q. And you were, at that time, representing in this matter the Carnegie Company?

A. At what time?

Q. June 6, 1900—at the time you made that report.

A. I would take it that I was reporting to the Carnegie Steel Company the means of carrying out a proposition that had been outlined by the Oliver Mining Company.

MR. SEVERANCE: I move to strike out the answer on the ground that it is apparent from the witness' statement that he "takes it" that that was what he was doing, that he has no recollection on the subject, and that he is merely basing his answer on what purports to be a record, which has been shown him; and that it is improper to refresh the recollection of the witness in that way.

By MR. DICKINSON:

Q. Do you agree with the inference that when you say you "take it" that that is what you were doing, that you have no recollection on that subject?

A. mean to say that my various communications to the Carnegie Company board with reference to the Oliver Iron Mining Company were ordinary communications that were made as representing various propositions from time to time that had been worked up by Mr. Henry W. Oliver; and I was the means of communication to the Carnegie Steel Company board.

Q. You were a trusted agent in the matter, of the Carnegie Company, were you not?

A. I was an officer—vice-president of the Oliver Iron Mining Company.

Q. You expected this to be relied on by the Carnegie people when you reported it?

A. Certainly.

Q. And you made the report expecting that?

A. Any report I made I expected to be relied on by the Carnegie Company.

Q. What were these other interests to which you referred, with whom these negotiations had taken place? You said something back there about conferring with various interests.

You used that expression. What were the various interests that were conferred with?

MR. SEVERANCE: I object, on the ground that the witness has already stated the conferences were had by Mr. Oliver, and not by himself. The question calls for hearsay, and is irrelevant and immaterial.

THE WITNESS: I know of no interests that I conferred with.

By MR. DICKINSON:

Q. I did not say that you conferred with; but you reported the result of a conference with various interests. I am asking you now what various interests you had in mind when you used that expression "various interests."

MR. SEVERANCE: We make the same objection as that which was made to the last question.

THE WITNESS: The interest that Mr. Oliver was conferring with was the Federal Steel Company.

MR. DICKINSON: We now ask counsel to produce the original of this contract, of which they do not admit this is a copy.

MR. SEVERANCE: Did you serve notice upon us for that?

MR. DICKINSON: Our subpoena is broad enough to cover it, but we ask particularly now that it be produced before Mr. Gayley's examination is concluded.

MR. SEVERANCE: We will find out if we have any such thing. I never heard of your calling for it before.

MR. DICKINSON: I will call for it specifically now. The contract called for is the original of the contract set forth on pages 441 to 444, inclusive, of Government Exhibits, Volume II, the contract being made the 9th day of July, 1900, between the Carnegie Company of the State of New Jersey and the Federal Steel Company——

MR. SEVERANCE: You want us to produce, if we can, the contract that purports to be set forth on pages 441 *et seq.* of Volume II of the Government Exhibits?

MR. DICKINSON: Yes.

MR. SEVERANCE: That is sufficient.

MR. DICKINSON: And we desire it before the conclusion of Mr. Gayley's examination. We would like to have it to-morrow if we can.

MR. SEVERANCE: If we can find it, you may have it.

By MR. DICKINSON:

Q. Mr. Gayley, please examine Government Exhibits Volume III, page 1293, minutes of the Carnegie meeting at which you were reported to be present, November 13, 1899, and a report there made by you, about which I desire to interrogate you.

MR. SEVERANCE: I want to enter an objection to this method of qualifying a witness to answer questions, as an improper way to refresh the recollection of the witness and as leading, irrelevant and immaterial, whatever the question may be that is founded upon it.

By MR. DICKINSON:

Q. The report begins on page 1307. Please examine that report. (After a pause:) State whether the facts stated by you in that report, when stated, were true, to the best of your knowledge.

MR. SEVERANCE: I object to that as leading, incompetent and immaterial, and wholly inadmissible under any possible rule of examination of a witness in chief.

THE WITNESS: The report presented to me, purporting to be a report I made to the Carnegie Steel Company, was correct and reliable, according to my knowledge at that time.

By MR. DICKINSON:

Q. I will ask you, now, Mr. Gayley, to look at Government Exhibits, Volume III, the meeting of the Carnegie directors of January 2, 1900, and the report which appears upon pages 1316 to 1319, purporting to have been made by you.

MR. SEVERANCE: I make the same objection to refreshing the recollection of the witness in this manner.

By MR. DICKINSON:

Q. Have you examined that?

A. I have.

Q. I will ask you whether or not the facts set forth in that report as having been made at that time by you were then true, to the best of your knowledge.

MR. SEVERANCE: I make the same objection to that as was made to the similar question based upon the witness' reading of the previous meeting concerning which he was last interrogated.

THE WITNESS: According to the best knowledge that I had at that time, this statement which purports to be a statement presented by me to the board was correct.

By MR. DICKINSON:

Q. On page 1318, near the top, there is a total given of 610,050,000 tons of ore. What did you mean, at that time, to embrace in contemplation then as ore coming within those figures?

MR. SEVERANCE: I object to that as incompetent and immaterial, and not the best evidence.

THE WITNESS: I intended to embrace what was recognized as ore in sight of what were then known as operating mines.

By MR. DICKINSON:

Q. Was that the then known commercially available ore?

A. Oh, by no means.

Q. Was it more or less?

MR. SEVERANCE: Was what more or less?

MR. DICKINSON: The amount.

MR. SEVERANCE: Which amount? Which way—available or not?

By MR. DICKINSON:

Q. The amount of commercially available ore. That is the last question I asked the witness. He said "By no means." I now ask him whether, at that time, the commercially available ore was more or less than that amount.

A. Far in excess of it.

Q. It was far in excess of that amount?

A. Yes.

Q. In the Lake Superior District?

A. Particularly in the Mesabi District.

Q. In the Mesabi?

A. Yes.

Q. What was the amount of commercially available ore

owned or controlled covering both fee ownership and lease ownership at that time?

MR. SEVERANCE: Do you mean all the ore in the range?

MR. DICKINSON: Commercially available ore.

MR. SEVERANCE: That is quite a considerable question.

MR. DICKINSON: I mean for these same districts given here, whose totals go to make up that grand total of 610,050,0000; to wit, the Vermillion, Gogebic, Marquette and Menominee.

MR. SEVERANCE: And the Mesabi. Do not leave that out. That was fairly good.

MR. DICKINSON: And the Mesabi.

MR. SEVERANCE: Do you want him to testify to the total amount of commercially available ore in all those ranges at that time? Is that the question?

MR. DICKINSON: No, no.

MR. SEVERANCE: That is what you are apparently asking him. It must be owned either in fee or by lease. Those are the only two ways I know of.

MR. DICKINSON: I mean owned by these companies set forth on page 1317.

MR. SEVERANCE: He stated that in his report.

MR. DICKINSON: The companies that are set forth on page 1317, I mean. The witness has summed up those companies on page 1318 as owning, at that time, 610,050,000 tons of ore. Now I ask whether or not that expressed his understanding at that time of all the then commercially available ore owned in these regions by those companies, at that time. He said "By no means."

MR. SEVERANCE: No. You are mistaken, Judge. You did not ask him that question.

THE WITNESS: No.

By MR. DICKINSON:

Q. What did you understand me to ask you, Mr. Gayley?

A. I understood you to ask me if that represented all the available ore of those ranges.

Q. Oh. I was only referring to those companies.

MR. SEVERANCE: That was not your question.

THE WITNESS: I did not know that.

By Mr. Dickinson:

Q. I will come back and ask you, then, what I really had in mind and what I thought you understood to be my question, because I was speaking only in reference to these companies—as to whether that represented, at that time, all of the then known commercially available ore owned and controlled in those regions by those companies whose names are set forth on page 1317.

A. That statement is intended to represent, as far as our mining officials could estimate, the ore in sight that was owned and controlled at that time by these companies.

Q. What do you mean by "in sight"? That is an expression I do not fully understand.

A. "In sight" means ore that can be extracted from a property that is determined through its developments and experience gained in mining operations as to the nature of the deposits.

Q. Does ore "in sight" differ from "known developed ore"?

A. Quite.

Q. Just explain that, please.

A. It is very much larger.

Q. It is larger?

A. Yes.

Q. The ore in sight is larger?

A. The ore in sight is larger than the "actually developed" ore.

Q. It extends to things that the other does not comprehend, does it?

A. Precisely.

Q. You have here in this estimate of 610,050,000 set forth certain companies on page 1317. State what other companies held large bodies of ore of this same character and coming within the same definition embraced by what falls under this 610,050,000 tons in those regions.

Mr. Reed: The statement itself concludes with the item "Independent mining companies."

Mr. Colton: But it gives an estimate of those. Those are accounted for. We want to know what other companies there are.

By Mr. Dickinson:

Q. I will ask you whether there were any large bodies not set forth on page 1317, and if so, what they were.

A. There were large quantities of ore. There were a great many mines, containing large quantities of ore, not owned or controlled by these companies, still in the hands of the fee owners, and which could be purchased.

Q. Not controlled by yourselves and those that you set down as independent mining companies?

A. Not controlled.

Q. Name some of them.

A. Well, it is pretty hard to go back thirteen years and state what they all were. I think that one-half of the Rouchleau could have been obtained, with 25,000,000 tons. There was the Sauntry mine, and there were a great many mines of the Western Mesabi that were eventually included in the Hill ore properties.

Q. Eventually, you say?

A. Yes, sir.

Q. Well, I am asking now only as to those that were known available commercial ores, or ores that were embraced within the term "in sight", at that time, just as you have defined the other 610,050,000 tons. Please confine it now to that.

A. I am mentioning only explored properties.

Q. You mentioned the Sauntry.

A. Yes.

Q. Was not that purchased by the American Steel & Wire Co.?

A. By the Steel & Wire later.

Q. Was it later?

A. That is my recollection; but in any event, I am not able to state from memory. The data, however, are available on that point, but I can not recall it, and I would simply wish to state this, that there were large tonnages; there were a great many deposits of ore embracing in themselves large tonnages which were controlled by the fee owners, and were not taken up by any of these independent operators or the Steel companies, and as a matter of fact anybody could go on the range and get all the ore he wanted.

Q. At that time?

A. At that time.

Q. You spoke of the Rouchleau; half of that was acquired by the Carnegie Company?

A. That was; and as I recall it, the fee owners for a while retained their interest in the other half.

Q. But then it acquired later the other half?

A. I think that was later acquired by the Consolidated; that is my recollection, but I am not sure of that.

Q. But it subsequently came under the Steel Corporation

A. Yes, sir.

Q. The whole of it?

A. The whole of it; that is my recollection.

Q. And so did the Sauntry?

A. Yes; through the American Steel & Wire.

Q. Now you stated that data are accessible. Have you such data, showing what the other mines were at that time?

A. I have not, but the Oliver Mining Company would know what those properties were, and my personal knowledge is that in 1900 there were available many properties, because in the first year after the Corporation was formed I presented to the Corporation property after property containing large tonnages which I recommended them to secure control of, but which they declined to take up.

Q. In what form did you make those recommendations—in reports?

A. Recommendation always to the president of the company—of the Corporation.

Q. Were they in writing?

A. I think always in writing.

Q. Always in writing?

A. Yes, sir.

Q. You have none of these reports in your possession?

A. Not in my possession, no.

Q. You have no data made up by you, as of the period of 1900, showing what other mines there were outside of those embraced in this report

A. I have personally no data.

Q. That is what I mean.

A. No, sir.

Q. And have made up no data?

A. No, sir.

Q. You can give no more definite information on that subject from your own knowledge?

A. No more definite information than to state that anybody could secure large tonnages of ore on the Mesabi Range.

Q. You said you made them to the president. What president?

A. President Schwab.

Q. Of the United States Steel Corporation?

A. That is at the beginning.

Q. At the beginning?

A. Yes.

Q. And later to whom?

A. President Corey.

Q. To the various presidents of the United States Steel Corporation?

A. That is what I stated; the president of the Corporation.

Q. Did you state that the Oliver Mining Company had estimates of these outside properties, or not?

A. The Oliver Mining Company would be the best source of information I know of, being right on the ground, and always aiming to keep conversant with every new deposit of ore that was opened up, through its engineering department.

Q. But do you know, as a matter of fact, whether they had, in any sort of written form, as of this period of which we are speaking, July, 1900, estimates showing the character and tonnages of ores, other than those embraced in these properties of which we have been speaking?

A. I doubt if they have it in that way.

Q. Now, on page 1317 you spoke of Old Range ore, and you have a table falling under Old Range. What did you embrace in that? I mean as to character and quality, in this estimate?

A. I embraced the iron ores in Michigan, Wisconsin and Minnesota.

MR. SEVERANCE: You mean the Vermillion Range in Minnesota?

THE WITNESS: I was going on to say—and these were ores that were all underground mining, had regular vein forma-

tion, and were of different geologic formation from the Mesabi Range.

By Mr. Dickinson:

Q. You are speaking now of the Old Range?

A. I am speaking now of what we call the Old Range, the character of ores existing with a hanging and foot wall, like in the Marquette, the Menominee and the Gogebic. They were the older ranges, and when the Vermillion Ranges and Eastern Vermillion, as at Ely, were opened up, the character of their ores and the geologic formation, partaking of that in Michigan and Wisconsin, were likewise designated as Old Range ores, they having the same general characteristics and having been won in the same way from the ground.

Q. What I am asking is whether, under this tabulation of Old Range ores, you include a certain character of ore as to metallic content and draw a line below which ore is excluded in this consideration. I mean now as an actual matter of fact.

A. As an estimate of ore in sight at any given time, it represented merchantable ore at that time.

Q. What did you regard as merchantable ore at that time?

A. At that time there was very little ore shipped that went below 55 per cent in iron.

Q. You would say then that under this Old Range it included the ores 55 per cent and over, and did not include those under 55?

A. There was a certain proportion of ores mined that went down to 40 per cent which had some peculiar advantages, as for instance the general grade of ore at the Pewabic mine, and the Iron Mountain was very low in phosphorus. On account of being low in phosphorus it was of some value in the making of Bessemer steel, and in addition the Mesabi ores as first mined were very rich, and needed the addition of silica to work properly in the furnace. Those lower grade ores like at Genoa and some others were brought down to make a mixture with the Mesabi ore.

Q. And they were included here, were they?

A. They were included.

Q. Was that large in proportion or small?

A. That was small in proportion, perhaps not over five per cent.

Q. So with that exclusion, what you have set forth under the heading of Old Range included 55 per cent or over of metallic content?

A. So far as I can recall, that was about it.

Q. Now, how far would the proportion of phosphorus be, except with respect to the ones you mention, how far would it go in or be in this estimate?

A. It would not be considered.

Q. Coming further to the Mesabi, and what you have included in the Mesabi, what was embraced in that term, as you have used it here, at that time in this table?

A. I would say about the same percentage.

Q. Would phosphorus cut some figure in that or not?

A. No, phosphorus cut no figure. You use the low phosphorous ore for making Bessemer iron, and the higher phosphorous for basic iron.

Q. Coming to the next page, 1318, where you deal with Bessemer ores, what you have included under the heading "Bessemer," how did the question of metallic content and phosphorus affect that classification?

A. Bessemer ore had to be sufficiently rich in iron and sufficiently low in phosphorus to make what was known in the market as Bessemer pig iron.

Q. What were those standards as applied to the ores included within these tabulations here?

A. There was no standard, nor could there be.

Q. I mean the basis of classification. What I mean is, you have included certain things here as Bessemer, page 1318.

A. Yes.

Q. I simply want to know what comes under the heading of Bessemer, as you have embraced it here.

A. I will explain that. What is generally termed Bessemer ore—for instance, the basic type—will be an ore that contained 60 per cent of iron and about .08 per cent of phosphorus. In other words, the relation of iron to the phosphorus had to be such that with the accretion of phosphorus from the coke it would make pig iron that would not exceed one-tenth of one per cent in phosphorus.

Q. Under the Bessemer process?

A. Under the Bessemer process; consequently there might be a wide variation in the percentage of iron and still you would be able to make a Bessemer pig iron.

Q. What were the minima here upon the basis of which you made out this table?

A. It was not made out on the definite relationship to the phosphorus, but it was taken on an average analysis of iron which was considered merchantable at that time; and there are many ores that might exceed the Bessemer limit in itself, as a Bessemer ore for producing Bessemer iron, but, by the admixture with other ores that were unusually low, they could be utilized for making Bessemer pig iron.

Q. Have you included some of those in this?

A. Everything that would go to make Bessemer pig iron was included.

Q. Under non-Bessemer what have you embraced?

A. Anything that was too high to make Bessemer pig iron.

Q. Were there any known commercially available ores there that did not fall under one or the other of these heads, Bessemer or non-Bessemer?

A. I did not get that question.

Q. You have classified certain things as being Bessemer.

A. I did not understand it the way you asked the question.

Q. Were there any known commercially available ores there that did not fall under one or the other of these heads, Bessemer or non-Bessemer, as you have used them?

A. Except as I have stated about the leaner silicious ores that were mined to a limited extent.

MR. SEVERANCE: These totals here on page 1319 add up the total of Old Range ores on page 1318; it is just a separation of Old Range.

By MR. DICKINSON:

Q. What proportion of phosphorus to iron content was the maximum that was permissible in Bessemer ore?

A. I do not know anybody who can answer that question. It varies with every ore. You might have an ore with 35 per cent iron and so low in phosphorus as to make a Bessemer pig

iron. It is the ratio between the two. In other words, we use——

MR. REED: That is what Judge Dickinson asked you, if I might interject. He asked you the proportion or ratio.

THE WITNESS: Where the percentage of phosphorus divided by the iron shall not exceed .08. per cent.

By MR. COLTON:

Q. At that time were not the Mesabi ores in general use higher in metallic content than the Old Range ores?

A. As an average they were, according to the ore that was shipped at that time; the earlier shipments of ore from the Mesabi Range consisted only of the richest ores.

By MR. DICKINSON:

Q. On or about June 20, 1901, which was shortly after the formation of the United States Steel Corporation, which was in April, I will ask you what per cent of the known Old Range ores, including Bessemer and non-Bessemer, of the then known commercially available ores, was controlled by the Corporation in the Lake Superior district.

A. I am unable to recall now.

Q. I will ask you to turn to Volume II, page 566, meeting of the executive committee of the United States Steel Corporation, June 21, 1901. I call your attention to the statement at page 566 as follows——

MR. SEVERANCE: I object to this as leading and as an improper way to refresh the recollection of the witness, and as immaterial.

By MR. DICKINSON:

Q. (Continuing) This is a statement of the chairman, Judge Gary: "Mr. Gayley stated that we now have about 70% of the known Old Range ores including Bessemer and Non-Bessemer, and that of the Bessemer Old Range, we control about 90%". I will ask you whether or not you made a statement of that sort to Mr. Gary.

MR. SEVERANCE: The same objection.

THE WITNESS: I presume I did, but I can not recall it.

By Mr. Dickinson:

Q. Give your estimate now, with your present knowledge, of what you had at that time of the known commercially available ores.

Mr. Severance: I make the same objection.

By Mr. Dickinson:

Q. (Continuing) I mean of Bessemer and non-Bessemer, of the Old Range.

Mr. Severance: I make the same objection. The witness has already stated that he can not tell, and that he has no recollection on the subject, and I object to his being asked to answer, based upon what purports to have been said by somebody else to have been said by him.

Mr. Dickinson: I am not asking what he said; I am asking for his estimate.

Mr. Severance: Which he has already told you he can not give.

The Witness: It was far too extravagant, in the light of subsequent developments.

By Mr. Dickinson:

Q. I am speaking of the then known. I did not ask you about subsequent developments but my question was of the then known available commercial ore.

A. I have already stated that I personally can recall nothing as regards making that statement. You present a statement to me. I have no recollection of it.

Q. But I asked you one question and you answered another question.

A. I beg your pardon.

Q. I asked you for your estimate of the then known. Now you say that it was too extravagant in view of recent developments. I am asking about the developments then known at that time, what your estimate would be.

Mr. Severance: The same objection.

The Witness.—I presume I made an estimate on my knowledge at that time.

(Whereupon, at 4:00 o'clock p. m., an adjournment was taken to tomorrow, Thursday, March 6, 1913, at 10:30 o'clock a. m.)

FORTY-SIXTH DAY.

EMPIRE BUILDING,
71 Broadway, New York City.

THURSDAY, MARCH 6, 1911.

Before Special Examiner John Arthur Brown.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON.

Present on behalf of the defendants, MR. LINDABURY, MR. SEVERANCE, MR. REED, MR. KELLOGG and MR. CUTHELL.

JAMES GAYLEY,

the witness under examination when the adjournment was taken, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. DICKINSON:

Q. Do you know where the Union and Sharon interests had ore properties in the Lake Superior District?

A. On the Mesabi Range.

Q. State whether or not the Sweeney and Donora and the Penobscot were mines belonging to them?

A. I believe those were the properties.

Q. When were those properties acquired by the Union and Sharon interests?

A. I do not recall.

Q. State whether or not it was between 1900 and December 15th, 1902.

A. I know it was after 1900.

Q. Do you know whether or not those properties were taken over by the Steel Corporation?

A. They were.

Q. Were these properties acquired between those periods?

A. I cannot speak definitely. I know that they were acquired about that time.

MR. LINDABURY: We have those dates in the record already, have we not?

MR. SEVERANCE: He is not asking when the corporation got them, but when the Sharon and Union bought them.

MR. LINDABURY: I know. I am not sure, but I have an indistinct recollection that we already have those dates in the record.

MR. DICKINSON: I do not recall it.

MR. SEVERANCE: I do not think it is in the record. It may be in Donner's testimony. I do not think it is, however.

By MR. DICKINSON:

Q. State whether or not the Champion Mine was acquired by the United States Steel Corporation.

A. It was acquired by one of its subsidiary companies.

Q. About what time?

A. I cannot recall, now, the exact year.

Q. I call your attention, Mr. Gayley, to Government Exhibits, Volume III, pages 965 and 966, meeting of the Executive Committee of the United States Steel Corporation, November 25, 1902, and will read therefrom, at page 966.

MR. SEVERANCE: I make the same objection that has been made heretofore.

MR. DICKINSON: Will you wait until I ask a question?

MR. SEVERANCE: No; I will make my objection right now. I object to reading from the record in this way for the purpose of leading the witness or attempting to refresh his recollection about matters appearing on said record.

By MR. DICKINSON:

Q. I will read from a statement made by the Chairman at a meeting at which were present Messrs. E. H. Gary, George W. Perkins, William Edenborn, E. C. Converse and James Gayley. (Reading from page 966):

"Mr. Gayley feels satisfied that the property (referring to the Champion Iron Mining Company property) will be taken up by some of the Cleveland interests, or perhaps by the new Sharon-Union Company in Pittsburg, and he would much prefer to see it with this corporation rather than with its competitors."

I will ask you whether or not you recommended to the United States Steel Corporation the purchase of that property, Mr. Gayley.

A. I did.

Q. State whether or not you made any statement to the effect that if it was not taken over by the Corporation it might go to one of its competitors.

MR. SEVERANCE: I object to that as leading.

MR. DICKINSON: I am not intimating what he shall answer. I am just asking whether he did or did not.

THE WITNESS: I cannot recall, now, if I made such a statement.

By MR. DICKINSON:

Q. Was the Union-Sharon Company a competitor, then, of the United States Steel Corporation?

A. The Union mills were and the Sharon mills were.

Q. They were competitors in the sale of steel products?

A. They were.

Q. Where were the steel products sold? Generally in interstate commerce?

A. I understand so.

Q. Where were the properties of the Chemung Iron Company located?

A. On the Mesabi Range.

Q. I will ask you whether or not the following properties or mines were owned by that company, to wit, the Wanless —answer to each one as I call them off, please.

A. I recognize that one.

Q. The Palmer?

A. I do not recognize that one.

Q. The Myers?

A. Not that one.

Q. The Niles?

A. Yes.

Q. The Pettit?

A. I do not recall that one.

Q. The Monroe?

A. Yes.

Q. The Tener?

A. Yes, sir.

Q. The Longyear-Bennett?

A. Yes, sir.

Q. Carson Lake?

A. I do not recall that.

Q. The Vivian?

A. I do not know that.

Q. The Weed?

A. Nor that.

Q. State, generally, what was the extent of the property of the Chemung Iron Company at the time it was acquired by the United States Steel Corporation or one of the subsidiaries.

A. Do you mean in acreage or tonnage?

Q. I mean in tonnage.

A. My recollection is that it was about fifty or sixty million tons of ore.

Q. What kind of ore was that?

A. Mesabi ore.

Q. Bessemer ore?

A. Some Bessemer and some non-Bessemer.

Q. What character of ore was that, as to quality?

A. It was good average Mesabi ore.

Q. Was it as good ore as the other ore properties?

A. No; it was lower in iron.

Q. What ore properties were higher in iron at that time?

A. Practically all the ore properties that had been acquired by the Oliver Iron Mining Company were higher in iron. Practically all the properties that were being operated by the Minnesota Iron Company were higher in iron.

Q. What percent in metallic content did the Chemung properties have, speaking broadly?

A. I can not recall now, but it was perhaps on an average two or three per cent lower in iron.

Q. What would that make it, about?

A. Well, say the other was 56 per cent, that would bring it down to 53 per cent.

MR. SEVERANCE: Are you stating your recollection as to what the percentage actually was, or are you merely saying 56 per cent less 3?

THE WITNESS: As close as I can approximate now; I know it was lower in percentage of iron in the ore body.

MR. SEVERANCE: What I meant was whether you had a recollection of the figures 56 and 53 that you have stated.

THE WITNESS: Not definitely those figures.

By MR. DICKINSON:

Q. But that is approximately correct?

A. I am making an approximation as closely as I can at this time.

MR. LINDABURY: I suppose that means wet or green ore, not dry ore?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. What would it be dry?

A. It depends on the water.

Q. In speaking of the others, you have spoken of them also in the same way?

A. In the same way.

MR. LINDABURY: What do you call that ore before it is dried?

THE WITNESS: Natural.

By MR. DICKINSON:

Q. Do you know the extent of the tonnage of the Monroe mine at the time it was acquired?

A. Not specially, no.

Q. Do you know whether you made an estimate to the executive committee that the extent of that tonnage was approximately 25,000,000 tons?

MR. SEVERANCE: I object to that as leading.

THE WITNESS: I do not recall now.

By MR. DICKINSON:

Q. State who controlled the Chemung Iron Company at the time it was taken over by the United States Steel Corporation; who were the principal owners of that?

A. C. A. Congdon.

Q. How about Mr. Oliver?

A. Henry W. Oliver was likewise interested in it.

Q. Was that Chester A. Congdon?

A. Chester A. Congdon.

Q. Did Mr. Congdon have any connection with the Oliver Mining Company?

A. He was at one time the attorney of the Oliver Mining Company in Duluth—the firm of Bilson, Congdon & Dickinson.

Q. What time was that? What period?

A. I think he retired from the Oliver Mining Company shortly after the Corporation was formed.

Q. Do you know about the date?

A. I do not.

Q. I ask you to read on pages 972 and 973, Government Exhibits, Volume III, a report which is taken from the minutes, and you can assume that to be a fact, that this is a correct copy of the minutes of the United States Steel Corporation. I wish you would read beginning with the words "Mr. Gayley submitted the following:" That is the meeting of May 12, 1903.

MR. SEVERANCE: I make the same objection to reading from the minutes by the witness, as an improper way of refreshing his recollection.

By MR. DICKINSON:

Q. I call your attention to the reference there in these words "The lease on this ore property owned by the Chemung Iron Company carries with it a traffic contract to the Eastern Minnesota Road." What was the Minnesota Road? What interests controlled it?

A. The Great Northern.

Q. State whether or not the statements made in that report were, at the time they were made, true, to the best of your knowledge—at that time.

MR. SEVERANCE: I want to reserve the same objection as to the preceding question.

A. I think they were.

By MR. DICKINSON:

Q. Where was the Canisteo ore property located?

A. The Western Mesabi.

Q. Were those properties purchased by the Corporation or one of its subsidiaries?

A. They were leased.

Q. At what time?

A. I can not recall the exact year.

Q. State whether or not it was 1905.

A. I know it was after the Chemung.

Q. What was considered, at the time it was acquired by the Corporation, to be the extent of the Canisteo ore property?

MR. SEVERANCE: You mean in tonnage?

MR. DICKINSON: Yes.

THE WITNESS: My recollection is that it contained over 40,000,000 tons of ore, but it was a low grade ore and had to be concentrated. Perhaps only two-thirds of that would be counted as merchantable ore.

By MR. DICKINSON:

Q. What parties owned or controlled the Canisteo ore property?

A. Mr. Congdon was the chief owner.

Q. The same Congdon?

A. The same Congdon.

Q. You remember the rate of royalty that was paid by the Corporation?

MR. SEVERANCE: That is all in writing.

THE WITNESS: I think it was about 37½ cents a ton.

MR. SEVERANCE: I would suggest that those leases are in writing, and they would show definitely. I object to this.

MR. DICKINSON: If he knows what it is.

MR. SEVERANCE: Of course there can be no controversy over it if he remembers.

MR. DICKINSON: He says 37½ cents.

MR. SEVERANCE: That is his recollection.

MR. DICKINSON: Yes.

MR. SEVERANCE: Is that correct?

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. Do you know what the rate of royalty was that was paid on the Chemung?

A. I think 50 cents.

Q. On all of the properties?

A. That is my recollection.

MR. SEVERANCE: Is that right, Mr. Colton?

MR. COLTON: It is right for the Monroe, and I suppose that property was the same.

By MR. DICKINSON:

Q. I will ask you to examine Government Exhibits, Volume III, pages 1253 and 1254, the report made to the board of managers of the Carnegie Steel Company June 6, 1899, at which were present Messrs. Schwab, Peacock, Phipps, Morrison, Clemson, Gayley and Lovejoy; also Messrs. George Lauder, W. H. Singer and W. E. Corey; said report purporting to have been made by you, and I will state that you can accept as a fact that this is a true copy of the Carnegie minutes. They are in by agreement of counsel on both sides. After having read that, please state whether or not the statements therein made were true to the best of your knowledge.

MR. SEVERANCE: I make the same objection to the presentation of this exhibit to the witness for the purpose of refreshing his recollection as an improper method of so doing. I further object to the question as leading, irrelevant and immaterial.

THE WITNESS: What is the question?

By MR. DICKINSON:

Q. State whether or not the statements made in that report by you were, when made, true, according to the best information you had at that time.

MR. SEVERANCE: The same objection.

THE WITNESS: I believe that to be the case.

By MR. DICKINSON:

Q. I will ask you, Mr. Gayley, to read in the same Volume pages 1282 and 1283, from the meeting of the Board of Managers of the Carnegie Steel Company, Limited, of October 9, 1899, at which you are recorded as being present, beginning: "The following communication from the Chairman to Mr. Gayley, under date of October 9th;" and on page 1283, a

table beginning, "A memorandum replying to the first portion of the Chairman's letter was read, as follows:" followed by the statement: "Mr. Gayley: 'The Fletcher and Day leases cover what we have called the Sheridan Mine," etc. (handing book to the witness).

MR. SEVERANCE: I make the same objection to this method of refreshing the recollection of the witness, and the further objection that any question founded upon such reading is objectionable as leading.

By MR. DICKINSON:

Q. State whether or not the statements contained in that record to which I have called your attention were true when made, to the best of your information and belief.

MR. SEVERANCE: The same objection.

THE WITNESS: I believe that is the case.

By MR. DICKINSON:

Q. At the time the United States Steel Corporation was formed, state whether the ore properties which were held by its subsidiaries, that went in under that control, were partly held in fee and partly by leasehold.

A. They were.

Q. What company did the Fayal Mine belong to?

A. The Minnesota Iron Company.

Q. Where was that located?

A. On the Mesabi Range, in the eastern section.

Q. Was that a leasehold, or held in fee?

A. I cannot recall.

Q. How about the Adams?

A. That was owned by the Consolidated Mines.

Q. You mean owned in fee, or by leasehold? When you used the expression, "owned" were you drawing a distinction?

A. I was not. It was controlled by them.

Q. Do you know whether that was owned in fee or leased?

A. I cannot recall now.

Q. Can you recall as to the Chisolm?

A. No; I cannot.

Q. I will ask you as to some others I have here. How about the Burt?

A. That was a leasehold of the Oliver Iron Mining Company.

Q. How about the Hull?

A. The same.

Q. And the Rust?

A. The same.

Q. And the Sellers?

A. That was an adjoining property. I think that was a lease, too.

Q. How about the Spruce?

A. As I recall that was a Consolidated property.

Q. Held in fee, or leased, according to your recollection?

A. I cannot tell you.

Q. How about the Minnewas?

A. That, I think, was a Minnesota Iron Company property.

Q. Held in fee or by leasehold?

A. I cannot recall now.

Q. State the character of those mines I have named as to size, in comparison with other mines owned or controlled by the subsidiaries of the Corporation.

MR. SEVERANCE: Do you not want to take them separately, Judge?

MR. DICKINSON: I may have to, if necessary.

MR. SEVERANCE: I suggest that it is rather hard for him to carry all of these in his mind. They are a lot of big mines.

MR. DICKINSON: I think they are all big mines.

THE WITNESS: The most of the properties that you have mentioned were very large mines.

By MR. DICKINSON:

Q. Were any of them small? If so, can you designate the ones?

A. I think the Minnewas and Sellers were small.

Q. But the others were very large mines?

A. They were large mines. Some of them were very large.

Q. What other mines owned by subsidiaries of the Corporation at that time were larger than these? Just name them.

A. There is no group of mines on the Mesabi Range larger than the aggregate of the Burt, Hull and Rust, which is practically one ore deposit.

Q. State what percentage of the ore controlled by the subsidiaries of the United States Steel Corporation at its formation was leasehold, and what was fee, approximately.

A. I could not even approximate it from memory.

Q. State whether or not the larger part was held in fee or by leasehold.

A. By leasehold.

Q. Mr. Gayley, prior to April 1, 1901, state whether you know of any case where, in the acquisition of a Mesabi ore property by lease in which the estimated amount of ore contained in the property amounted to as much as 5,000,000 tons, the bonus exceeded five cents a ton.

A. I do not understand the question. As I understand the question, it is on the assumption that every leasehold required a bonus to be paid.

Q. No; I am not asking you about every one, but I am asking you if you know of any one prior to April 1, 1901, where, in addition to the royalty, there was paid a bonus in excess of five cents a ton, where the estimated tonnage was as much as 5,000,000 tons?

MR. SEVERANCE: May I ask a question to clarify that question a little, Judge?

MR. DICKINSON: I think the question is clear.

MR. SEVERANCE: No; if you will pardon me, it is not.

MR. DICKINSON: Let the witness answer.

MR. SEVERANCE: Excuse me. I am going to put this in whether you want me to or not.

MR. DICKINSON: You can put your objection—

MR. SEVERANCE: I can put in what I please. There are—

MR. DICKINSON: There is nothing to keep you from putting in what you please, but it should be in the form of an objection to the question.

MR. SEVERANCE: There are many cases shown by the records previously introduced in evidence where leasehold properties have been sub-let. In some instances there has been a cash bonus in round sums. In other cases there has been an

enlarged royalty paid to the lessee. I would request counsel, in putting this question, to explain whether he means to cover both of these under the head of "bonus," or whether by "bonus" he simply means a lump sum paid to the original lessee over and above the royalty which has to go to the fee owner.

MR. DICKINSON: The present question, Mr. Gayley, applies to a bonus paid in addition to the assumption of the royalty, whatever it was, that was on any particular mine to which you may refer in your answer.

MR. SEVERANCE: That does not explain the thing that I asked you to explain in your question, Judge. I understand that, but what do you mean by "bonus;" that is the point?

MR. DICKINSON: I mean by "bonus" cash paid. I thought everybody understood that bonus meant the amount of cash paid, where a lease was taken over, in consideration of the transfer of the lease, the transferee paying the royalty and paying to the transferor that bonus for parting with the lease.

MR. SEVERANCE: That is, a lump sum in cash?

MR. DICKINSON: Yes.

MR. SEVERANCE: That is all right. That answers my question.

MR. DICKINSON: I do not see how there could have been any misunderstanding, but I am glad to make it plain, if counsel did not understand it.

MR. SEVERANCE: That makes it clear.

By MR. DICKINSON:

Q. Now, Mr. Gayley, do you understand?

A. I do not recall any.

Q. Can you recall any where the amount of estimated tonnage was as low as 4,000,000 tons?

MR. SEVERANCE: Is that all the question?

MR. DICKINSON: I am repeating the same question with the modification that instead of "as much as 5,000,000 tons," 4,000,000 tons be substituted.

THE WITNESS: I can not recall any.

By Mr. Dickinson:

Q. I will repeat the same question and substitute 3,000,000.

A. I can not recall any.

Q. Do you recall any where it was in excess of 5,000,000?

Mr. Reed: That was your first question.

Mr. Dickinson: Then I will withdraw that.

By Mr. Dickinson:

Q. I repeat the same question and substitute 2,000,000.

A. The same answer.

Q. I will substitute in the same question 1,000,000.

A. The same answer.

Q. Now, without repeating the same question in full, I will ask you the question with respect to Old Range ore, where it was as much as 5,000,000 tons.

A. That is a far more difficult question to answer, respecting the Old Range ores. They were different in their formation from the Mesabi, and you can never actually look far ahead to any considerable tonnage. Taking the tonnage in sight, for instance, on the Queen group of mines, it would be in excess of five cents a ton.

Q. What, of the Queen group of mines, was acquired prior to April 1st, 1901, in the acquisition of which, in addition to the royalty, a bonus was paid in excess of five cents a ton for the ore?

A. The Queen group of mines was practically one mine, consisting of adjoining 40 acre lots, and operated as one mine. That property was taken over, as I recollect, for something like $250,000 as a bonus, and the developed ore in the mine at that time was not over 200,000 tons.

Q. What was the ore estimated to be there when you took it over?

A. I can not recall at this time, but it would have been over 1,000,000 tons, at least, that it was expected that the mine would produce.

Q. At the time the purchase was made?

A. At the time the purchase was made; but actual developments did not show ore over about 200,000 tons.

Q. But on the then estimated production you paid a bonus of $250,000?

A. On the assumption that the vein would continue down with the same integrity that had been shown to the depth of its then existing development.

Q. And it was on that assumption that that amount was paid?

A. On that assumption.

Q. Is there any other instance that you can give of property acquired prior to April 1st, 1901, by any one in this section, the Old Range, where more than five cents of bonus per ton was paid upon the estimated tonnage?

A. I do not recall now.

Q. Who was Mr. W. B. Treat? I will ask you if you know of him as in any way connected with the Lake Superior Iron Ore Association.

A. I can not recall his name now in that connection.

Q. How about W. G. Mather? Was he connected with it?

A. With what?

Q. The Lake Superior Iron Ore Association.

A. I never heard of the Lake Superior Iron Ore Association.

Q. Did you not know of any ore association that existed between 1895 and 1901?

A. There was in Cleveland an association which was generally designated as the Bessemer Ore Association.

Q. Do you know of Mr. Treat in connection with that association?

A. I do not recall; I never came in contact with him.

Q. How about Mr. Mather?

A. I know him very well.

Q. Was he connected with that association?

A. He was.

Q. In what capacity?

A. Prior to 1901?

Q. Prior or subsequent, both.

A. He was a member of it, and at one time president of it.

Q. Was he a member before 1901?

A. I believe so.

Q. When was he president?

A. I think it was 1904.

Q. How about Samuel Mather? Did he have any connection with it?

A. Yes, sir.

Q. What was it?

A. All the ore interests in Cleveland; well, not all, but the majority of the ore interests in Cleveland were members.

Q. Members of the association?

A. Members of the Bessemer Ore Association.

Q. I will ask you to read pages 1283 and 1284 of Government Exhibits, Volume III, minutes of a meeting of the board of managers of the Carnegie Steel Company, Limited, October 16, 1899, at which you are recorded as being present, and I will ask you whether or not you understood that you were to keep in touch with the ore situation and whether you did keep in touch with it.

MR. SEVERANCE: I reserve the same objection, to leading the witness or attempting to refresh his recollection in this manner, as made in other cases.

THE WITNESS: What was the question?

By MR. DICKINSON:

Q. Whether or not you understood you were expected to keep in touch with the ore situation, and whether you did keep in touch with it.

A. I always was in touch with it.

Q. Did you attend, before the organization of the United States Steel Corporation, the meetings of the ore association at Cleveland or elsewhere?

A. I never did.

Q. After the formation of the Corporation did you attend any of the meetings?

A. I did.

Q. Where were those meeting held?

A. The meeting that I attended was held in Cleveland.

MR. SEVERANCE: Did you say meeting or meetings?

THE WITNESS: There were two meetings the same year.

By MR. DICKINSON:

Q. Now, I call your attention to this, stated by Mr. Curry: "I think it is to our interest to have the price pretty high,"

referring to ore. State whether or not that was to the interest of the Carnegie Steel Company.

MR. SEVERANCE: I object to that as leading.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Why?

A. Because they always had a good many contracts for steel on a sliding scale, based on the price of pig iron. It was more advantageous to them to have the price of pig iron high on that account. There is not so much profit in the steel business when the price of pig iron is low.

Q. Was the Carnegie Company selling ore?

A. It was not.

Q. It was using its ore to manufacture steel products?

A. It was.

Q. And the higher the ore the higher the steel products?

A. The higher the ore the higher the pig iron; the higher the pig iron the higher the products.

Q. And it was interested in keeping the price up high for the effect it would have on products?

A. Always.

Q. And you were expected to keep in touch with the question of ore prices?

A. At that time I did keep in touch with the various ore men in Cleveland, regarding their ideas.

Q. Were you in November, 1899, an officer and director of the Oliver Iron Mining Company?

A. I was.

Q. I will ask you, Mr. Gayley, to examine pages 764 and 765 of the Government Exhibits, Volume II, which is in evidence as the minutes, and you can accept that as being a true copy of the minutes, by agreement of counsel of the directors of the Oliver Mining Company of November 28, 1899, at which you were recorded as being present.

MR. SEVERANCE: I make the same objection to refreshing the recollection of the witness or leading him in this manner as heretofore made in previous cases of a similar character.

By MR. DICKINSON:

Q. State whether or not the statement there, as follows,

on page 765: "Within the last few days, the price for next year has practically been decided and fixed at an advance of $2.50 per ton," is correct.

A. I presume it is correct. It is, to the best of my knowledge and belief.

Q. You had been in touch with the question of ore prices all along, had you?

A. I was conversant with what the ore merchants in Cleveland were considering.

Q. Please examine, from the minutes of the Board of Directors of the Carnegie Steel Company, Government Exhibits, Volume VI, pages 1877 and 1878, being the minutes of the meeting of June 25, 1900, at which you are recorded as being present. (After a pause:) Have you read that?

A. Yes.

Q. State whether or not, Mr. Gayley, the statements therein made, when made, were true to the best of your knowledge and belief.

MR. SEVERANCE: I want to reserve the same objection to leading the witness and attempting to refresh his recollection by an inspection of this exhibit as made in other cases of a similar kind, and to reserve the objection to the question in the same way.

THE WITNESS: I believe they were.

By MR. DICKINSON:

Q. Now turn to page 1885 of the same volume, minutes of the board of directors of the Carnegie Steel Company, meeting of July 9, 1900, and read there beginning with "Mr. Gayley: I presented," and so forth, down through the words "Mr. Schwab: I think the Valley people will agree to blow out a number of their furnaces."

MR. SEVERANCE: I make the same objection.

By MR. DICKINSON:

Q. Have you read it?

A. Yes.

Q. Please state whether or not the statements there made under your name were, when made, true, to the best of your information and belief at that time.

MR. SEVERANCE: The same objection.

THE WITNESS: I believed them to be so.

By MR. DICKINSON:

Q. Who were the "Valley people" referred to by Mr. Schwab, where he says "I think the Valley people will agree to blow out a number of their furnaces"?

A. Those were the pig iron makers in the Mahoning and Shenango Valleys.

Q. State whether or not they did, thereafter, blow out any of their furnaces.

A. I do not know.

Q. You do not recall?

A. I do not recall.

Q. State whether or not they were in this Bessemer pig iron association.

A. There was what was known as a pig iron association in the Valley, which included both Bessemer and non-Bessemer.

Q. Were these Valley People members of that association?

A. The Valley people were the people that were represented in that association.

Q. Was the association to which you refer the one that J. G. Butler, Jr., was connected with?

A. That is the one I am speaking of.

Q. State whether or not the ore men in Cleveland entered into any agreement such as is referred to by you in that statement, as follows:

"Mr. Gayley: I presented to the Ore men in Cleveland the proposition not to sell our surplus ore. They held a meeting in Cleveland last week to consider this suggestion and they have advised me that it appealed to them favorably. We were to have held a meeting in New York last Friday but on account of the heat it was postponed. We expect to have one in New York or Cleveland in about two weeks."

I will ask you whether you did have such a meeting, and did you enter into such an agreement?

A. I never attended any meeting until 1904.

Q. Whether you attended a meeting or not, state whether or not such an agreement as that was entered into between the Carnegie Company interests and the Cleveland ore people.

A. As I recall, I do not think it passed beyond the stage of talking of the proposition. I recall no action having been taken.

Q. I have called your attention to the meeting of July 9, 1900; now I call your attention to the meeting of July 31, 1900, pages 1888 and 1889 of the same volume, under the heading of "Ore, Supply," beginning with "Mr. Gayley: Last week", etc. I will ask you to read through that statement.

MR. SEVERANCE: I make the same objection, to attempting to refresh the recollection of the witness in this way, as heretofore made in similar instances.

By MR. DICKINSON:

Q. (Continuing) Down to the middle of page 1889; have you read that?

A. Yes, sir.

Q. State whether or not the statements therein made were, when made by you, true to the best of your knowledge and the information that you had at that time.

MR. SEVERANCE: The same objection, and as leading, and as an improper way to refresh the recollection of the witness.

THE WITNESS: I believed them to be so.

By MR. DICKINSON:

Q. I will ask you whether or not you now think that no arrangement was entered into such as I questioned you about a while back, or whether your recollection is refreshed in regard to that. What do you wish to say in regard to that?

A. Even in view of this minute, I do not recall that there was any ultimate action taken which at the close of the season limited ore simply to sales. There is nothing here to show it.

Q. Did you attend these meetings in this report referred to by you?

A. I have no recollection of attending any meeting of the Ore Association except in 1904.

Q. Did you have reports made to you of what occurred at these meetings?

A. I frequently saw the ore merchants in Cleveland; they frequently came to Pittsburgh; we frequently talked by telephone over the situation.

Q. You got information, did you, as to what was being done?

A. Oh, yes.

Q. And reported that information to your company?

A. Certainly.

Q. This appears here, referring to the Ore Association: "They would have no objection in breaking away and for this reason I think that prices will hold, and that the matter of holding the prices is very largely in our own hands." Was that your judgment at that time?

MR. SEVERANCE: Pardon me. You said "no objection"; you mean "no object"?

MR. DICKINSON: Yes, "no object."

MR. SEVERANCE: I object to that question because it is misleading when separated from the context. I also object to it as leading. It is both leading and misleading, in this case, and irrelevant and immaterial.

By MR. DICKINSON:

Q. I will ask you, then, to examine the whole context, beginning on the page above with the heading "Ore Supply", and then answer the question.

A. What was the question?

(The pending question was repeated by the stenographer as follows:)

"Q. This appears here, referring to the Ore Association: "They would have no object in breaking away and for this reason I think that prices will hold and that the matter of holding the prices is very largely in our own hands."

By MR. DICKINSON:

Q. Was that your judgment at that time?

A. It was.

By MR. DICKINSON:

Q. I will ask you to look at page 1907 of the same Volume, minutes of the Carnegie Steel Company, December 31, 1900, under the heading, "Trading Ore for Pig Iron", and read what Mr. Kerr says there, and Mr. Schwab.

MR. SEVERANCE: I desire to object on the same grounds as heretofore, and on the further ground that the minutes of this meeting of December 31st, 1900, which begin on page 1906,

state that Mr. Gayley was abroad and not present at the meeting.

MR. DICKINSON: I have not asked the question yet.

MR. SEVERANCE: I know, but you are going to.

MR. DICKINSON: Have you read that?

THE WITNESS: I have.

By MR. DICKINSON:

Q. State whether you had any knowledge, as an officer or director of the Carnegie Steel Company, of its entering into any arrangement for trading ore for pig iron.

A. I do not recall any.

Q. Did you have any knowledge, as such officer or director, that objection was raised that such an arrangement, if one existed, was contrary to an arrangement that had been entered into by the Carnegie people and the Valley Association?

A. I was not conversant with it.

Q. After the formation of the United States Steel Corporation, when and where did you attend meetings of the ore association?

A. In Cleveland, in the early part of 1904.

Q. How many times did you attend such meetings?

A. I attended twice that I know of.

Q. Did Mr. Kerr attend any of those meetings?

A. He attended with me. We were requested to attend this meeting.

Q. Who requested you to do so?

A. Well, it came about in this way: Two of the ore merchants in Cleveland came here to New York to present a proposition as the ore business did not look very strong, and in order to prevent any demoralization in prices by some of the ore miners going into the market and selling at very low prices, they brought here a proposition for the Steel Corporation to buy from the independent ore miners and merchants a million and a quarter tons of ore to relieve the market; and it was in connection with that, that I was invited to come to Cleveland; and I took Mr. Kerr with me.

Q. Was the purchase made or not?

A. It was not.

Q. I have asked you in regard to attending meetings.

Did you or not consult with the Cleveland people from time to time in regard to ore prices, by telephone or by correspondence?

A. They consulted with us.

Q. They consulted with you?

A. Yes.

Q. How often?

A. In 1904 they consulted with us, and they were very fearful of the condition in the iron trade, as shown by their desire for us to buy a million and a quarter tons of ore; and they thought they would have to accept very low prices, and they wanted to know our views of the matter. We counseled them that they were rather too much exercised over the situation, and that they ought not to consider cutting down the price of ore to a very low price; that the outlook in the industry did not justify such pessimism.

Q. What price was considered to which a cut should be made?

A. As I recollect, the price was over $5 a ton, and they wanted to cut it down to about half that price.

Q. What was done as to the price?

A. They did not take our advice. They went off independently and put the prices pretty low.

Q. How low?

A. I can not tell you definitely, but they cut the prices nearly in two.

Q. How long did that continue?

A. That continued for that season of ore prices.

Q. And that was contrary to your counsel?

A. That was contrary to my estimate of the situation, of which I advised them.

Q. You use the word "advised," and I use the word "counsel." It was contrary to the judgment you expressed to them?

A. Precisely.

Q. You have spoken of 1904; state whether or not, before the formation of the United States Steel Corporation, you had conferences with the members of this association from time to time, when you did not attend the meetings,

such conferences being either by letter or by their coming to where you were, or by telephone.

A. Yes; in 1900.

Q. Were there any previous to 1900?

A. No.

Q. But in 1900 you did have them?

A. I did.

Q. Was the question of prices then discussed?

A. The prices, as I recollect, were pretty high that year; and the question, as I recall, was only with respect to bringing down ore; only with reference to the amount of ore to be brought down. I do not recall any discussion as to the price of ore.

Q. In regard to bringing down ore, what position did you take?

A. The position that we recommended was to bring down no more ore, as has been set forth in the minute you read, than was sold.

Q. What was the object of that recommendation, and what would be the effect of that upon the ore market?

A. The effect of that was to keep up the price of pig iron.

Q. Referring to a period after the formation of the United States Steel Corporation, state whether or not in your discussions or communications with the members of the ore association you contended that the differential between Old Range ore and Mesabi ore was too great.

A. I may have, but I can not recall.

Q. Mr. Gayley, state whether or not in 1902 the independent ore mines asked the leading ore interests or asked the United States Steel Corporation, alone or among others, to purchase 1,500,000 tons of ore.

A. At what date?

Q. In January, 1902.

A. I do not recall. The only purchase in my mind was, I think, in 1904.

MR. SEVERANCE: The only proposed purchase, you mean, do you not?

THE WITNESS: The only proposed purchase.

MR. SEVERANCE: It has already been stated that the purchase was not made.

THE WITNESS: The purchase proposed to be made by us to relieve the situation.

By MR. DICKINSON:

Q. I will ask you whether, on or about April 20, 1904, there was a meeting of Lake Superior iron ore producers at the offices of the vice-president of the United States Steel Corporation in the Empire Building.

A. I do not recall any. I can not imagine any occasion for such a meeting. The ore merchants in Cleveland had declined to take our advice and suggestions, and went independently, and I can not conceive of any object of having any conference with them.

Q. Do you recall any such meeting on or about such date, at which were present the representatives of the Cambria Steel Company, the Republic Iron & Steel Company and W. P. Snyder & Company?

A. I can not recall. Those were manufacturers.

Q. I first asked you whether you recall a meeting of a particular date of the Lake Superior iron ore producers. Now I am asking you whether you recall any meeting held in the office of the first vice-president of the Steel Corporation in the Empire Building, New York, at which were present Lake Superior iron ore producers, representatives of the United States Steel Corporation, of the Cambria Steel Company, of the Republic Iron and Steel Company, and W. P. Snyder & Company, and the various iron ore selling firms of Cleveland.

A. I have no recollection.

Q. If such a meeting occurred and lasted for five hours, you have no recollection of it?

A. None whatever.

Q. Do you remember a meeting that occurred in February previous at Cleveland?

A. That is the one I said I attended.

Q. That is the one you attended?

A. Yes.

Q. But if there was a meeting in New York in April which took up the questions originally raised in the Cleveland meeting of February, you have no recollection of it?

A. I have no recollection now.

Q. Were you present at any meeting about that time, at which the producing-consuming interests—I mean by that those who mined ore and manufactured it—contended for a four dollar basis for Old Range Bessemers, as against $4.50 of the preceding year, and expressed a willingness to reduce this figure to $3.90, and at which the merchant ore men at first advocated $3.50, or a $1.00 reduction, and aterwards came to $3.80.

MR. SEVERANCE: I object to that as leading, irrelevant and immaterial.

THE WITNESS: A meeting in New York?

By MR. DICKINSON:

Q. Yes.

A. I know of no such meeting in New York.

Q. Do you know of any such meeting anywhere?

MR. SEVERANCE: I repeat the same objection, as leading.

THE WITNESS: There was a second meeting in Cleveland. When they found that we were not going to "hold the bag" for the ore interests and buy the ore, then they got into the second meeting. They began to discuss prices.

By MR. DICKINSON:

Q. Were you at that meeting?

A. I was at that meeting.

Q. So that you were at two meetings in Cleveland?

A. That is what I have stated already.

Q. What was the date of the first one? In February?

A. In February.

Q. When was the next one?

A. Perhaps a month later. It was afterwards, but not a great while afterwards.

Q. State whether or not in the early part of May, 1904, the producers of Lake Superior ores entered the selling season without any agreement as to prices for the first time in ten years.

MR. SEVERANCE: I object to that as immaterial and irrelevant.

THE WITNESS: I cannot definitely state that it was the first time in ten years. There was a great disorganization between

the various merchants of ore in Cleveland; as, for instance, Messrs. Corrigan, McKinney & Company announced that they would sell at any price they chose, and did, I believe.

By Mr. Dickinson:

Q. You say you cannot recall that that was the first time that that condition occurred in ten years?

A. Yes.

Q. What other time do you recall within ten years preceding that, if you can recall any, at which such a condition existed?

A. I say I cannot recall any such condition.

Q. State whether or not at any meeting in New York or elsewhere in the early part of 1904, to your knowledge, the United States Steel Corporation assumed the attitude that, if it kept out of the market as a seller of ore, either directly or by conversion deals, it should not be restricted in the amount of ore it mined and brought down for its own use.

A. We always occupied that position,—unlimited production for our own use.

Q. How about production as to sales? Did you have any agreement or understanding at any time with respect to that?

A. The corporation was never in the market as a seller of ore.

Q. Was there any agreement or understanding with these ore producers that you would not be?

A. No agreement or understanding, simply an announcement to them that we were not in the market as ore sellers; that it was the purpose of the corporation to reserve its ore supply for its own use.

Q. Did you sell any ore shortly after the corporation was first formed?

A. I think there was a little sold the first year. In the amalgamation of these mines of course there were some old contracts to be carried out; and in addition to that there were some firms, at least during the first year, that had been purchasers from the other companies, like the Minnesota or Consolidated Mines, and it would have been a hardship to them not to have been supplied with their regular grade of ore which they had been accustomed to, and so the corporation, for the first year at least, and perhaps to some extent in the

second, I cannot say, supplied these old customers of these companies with some ore.

Q. Does that embrace all the ore that they sold, the definition that you have given?

A. Yes.

Q. State whether or not, at any meeting in 1904 at which were represented the merchant ore companies of Cleveland, the United States Steel Corporation held out for prices approximating those of the preceding year.

MR. SEVERANCE: I object to that as leading and as incompetent and immaterial.

(The pending question was repeated by the stenographer.)

MR. SEVERANCE: I submit that it is an unfair way of asking the question. I do not think Judge Dickinson means to be unfair, but the necessary inference from that is unfair in view of the preceding testimony of the witness. He has already stated that they acted independently. They advised, but the words "held out for" mean something other than that.

By MR. DICKINSON:

Q. Please answer the question to the best of your ability.

A. At this meeting in Cleveland which I was requested to attend, after the Cleveland ore merchants had asked the Corporation to purchase iron ore and "hold the bag" for them to the extent of a million and a quarter tons, and shut down their own mines, we discussed the question of prices at this Cleveland meeting. As I stated before, they were extremely pessimistic. We were, for reasons already explained, desirous of having ore sold at a fair price. I went to this meeting and explained to them that according to their mood at the time they were practically giving their ore reserves away without profit; and, in order to get them to accept a reasonable price for ore, I recommended that the prices for the preceding year be adhered to, not with the intention that they should adhere to them, but perhaps that they might try to compromise between our suggestion and the very great pessimism as to prices that they held. My suggestion was for the purpose of trying to get an average mean and fair price.

Q. What do you mean by fair price in that connection?

A. I remember very clearly that situation—about $4 to $4.50 a ton.

Q. How would their reducing the price affect the United States Steel Corporation, favorably or unfavorably?

A. It would reduce the price of pig iron and reduce the price of steel.

(Whereupon a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

JAMES GAYLEY,

the witness under examination when the recess was taken, resumed the stand.

DIRECT EXAMINATION (Continued).

MR. DICKINSON: Yesterday we called upon opposing counsel to produce the original of the contract of the 9th day of July, 1900, between the Carnegie Company and the Federal Steel Company, a copy of which is printed on pages 441 et seq., Government Exhibits, Volume II. We now ask if you have found that.

MR. SEVERANCE: I have inquired of Mr. Filbert, who is the comptroller of the Corporation, and the official who would have knowldege of this document if it is in the files of the Corporation, and he advises me that he has never seen it, and is satisfied that it is not here. I am making further inquiry in other places, and will advise counsel as soon as I get a response.

By MR. DICKINSON:

Q. Mr. Gayley, state whether or not in 1900 the Carnegie Steel Company took steps to purchase land at Conneaut Harbor and to form a corporation in connection therewith known as the Conneaut Land Company.

A. They did.

Q. What was the object of that?

A. For the purpose of locating works on the Lakes.

Q. What kind of works were in contemplation?

A. At that time they were considering the construction of a wire plant and a tube plant.

Q. And a pipe plant?

A. That is what I mean by a tube plant.

Q. Did you have in contemplation also making cotton ties and nails?

A. Not at that plant, I think.

Q. Did the Carnegie Company?

A. At some of their mills, yes.

Q. They did have in contemplation at that period making hoops and cotton ties?

A. Yes.

Q. Do you know whether the directors made an appropriation about that time for the purpose of erecting works there?

A. I do not think the appropriation was actually authorized.

Q. I mean for the wire plant.

A. I do not think it was actually authorized. They had a great many estimates of plants, and had various schemes that they were considering, whether to locate it in conjunction with one of their present mills, or on a new location in Pittsburgh, or at Conneaut. I do not recall any appropriation having been actually made.

Q. In reference to wire, you are speaking now?

A. That is what I am speaking about.

Q. Do you have any recollection of an appropriation of $1,400,000 for a rod and wire nail plant to be built at Duquesne, in 1900?

A. That was considered and was what I had in mind as a location, when I spoke of a plant in connection with one of the present mills. I do not recall an appropriation being actually made, but in any event there was no use made of it.

Q. Within less than a year of that time the Carnegie was taken over by the United States Steel Corporation, was it?

A. It was.

Q. When did the negotiations begin which resulted in the taking over of the Carnegie properties by the United States Steel Corporation?

A. Around about the first of the year. I was abroad at the time.

Q. About the first of the year 1901?

A. Yes; as far as I know.

Q. Mr. Gayley, I ask you to look at page 887, Volume VI, Government Exhibits, in the minutes of the Carnegie Steel Company, under date of July 16, 1900, at which you are recorded as being present, and ask whether or not that refreshes your memory as to the appropriation, and whether or not you recollect now that there was such an appropriation. (Handing book to the witness.)

MR. SEVERANCE: I make the same objection to this method of refreshing the recollection of the witness as I have made heretofore, and object to the question as leading.

THE WITNESS: According to this minute an appropriation of $1,400,000 for a rod, wire and nail plant at the Duquesne Works was authorized; but no expenditure of this appropriation was ever made for a steel and wire plant. Mr. Carnegie was heartily in favor of going ahead. Later in the year he changed his mind, in which he was joined by Mr. Phipps and Mr. Lauder, and the matter was held up, and no expenditure for the extension as covered by this appropriation was made.

By MR. DICKINSON:

Q. Do you recall, now, that there was such an appropriation?

A. I do not recall from my actual memory, except as it is presented here in the minutes. I assume that they represent the facts in the case.

Q. State, Mr. Gayley, whether or not in 1900 the Carnegie Steel Company, on account of dissatisfaction as to the rise of railway rates, contemplated and considered the question and took steps towards having a different railway connection from what they previously had, and what steps were taken, if any?

A. I do not know to what that refers.

Q. My question was as to 1900. Now I will change that to 1901, and ask you if you recall any steps taken by the Carnegie Company on account of railroad rates to bring about a different situation and connection in respect of railroad shipments.

A. The matter is not clear to me now.

Q. I will ask you, please, to examine page 1911 et seq. of Government Exhibits, Volume VI, beginning at the title "At a meeting of the Board of Directors of the Carnegie Steel Company held February 4, 1901," at which you are recorded as being present, and then turning over to the next page, under the heading "Railroad agreement," and then state whether or not you recollect such an agreement, and whether it was entered into.

MR. SEVERANCE: I make the same objection that I have made heretofore to this method of refreshing the recollection of the witness, and object to the question as leading, incompetent, irrelevant and immaterial.

THE WITNESS: What is the question?

By MR. DICKINSON:

Q. I want you to read that railroad agreement, beginning on page 1912, and on through, or examine it sufficiently to satisfy yourself, through page 1918 down to the words "Sales reports"; and then the question is whether or not you know of that agreement and whether or not such an agreement was entered into.

MR. SEVERANCE: I repeat my objection.

THE WITNESS: Yes; I know this agreement was entered into with the Wabash Road and the connecting line from the Wabash to the Union Railroad.

By MR. DICKINSON:

Q. Between the parties recited as being parties to the agreement?

A. Between those parties. I was familiar with this agreement, but not as to the date of its execution.

Q. When I first asked you, I gave the wrong year, anyway, so that it did not address your mind to the matter.

A. Yes.

Q. Mr. Gayley, I will ask you to look at Government Exhibits, Volume III, minutes of the Carnegie Steel Company, Limited, under date of January 31, 1899, of a meeting at which you are recorded as being present, and I call your attention at page 1191 to the following, from a letter written by Mr. Carnegie——

MR. SEVERANCE: Just a moment. I object to counsel examining the witness in this manner, or refreshing the recollection of the witness in this manner and leading the witness by putting a question in this way.

By MR. DICKINSON:

Q. (Continuing) "Here is a suggestion: The question of Coke purchase was separated when option given Federal Steel Company. Let it remain so, because The Carnegie Steel Company has had forced upon it far more than ever intended, the purchase of Bethlehem mills, the erection of 10 Open Hearth Furnaces, is new business."

Do you know anything about the Carnegie Company having forced upon it the purchase of the Bethlehem mills? If so, explain the transaction.

MR. SEVERANCE: I repeat the same objection.

THE WITNESSS The Carnegie Steel Company purchased two plate mills, I think it was, from the Bethlehem Steel Company, which were not used by them, and the Bethlehem was very glad to get rid of them.

By MR. DICKINSON:

Q. In what way, if at all, was that sale forced upon the Carnegie Company?

A. It was not forced upon the Carnegie Company. That is a misstatement. They were willing to sell. They were not in use, and the Carnegie Company were willing to purchase.

Q. Then Mr. Carnegie was in error in making that statement, according to your knowledge?

A. Yes, sir.

Q. Now, there is a reference there to an option given to the Federal Steel Company. If an option was given please state what it was, and I will let you examine these pages 1190 and 1191 to see if they refresh your recollection, before you answer.

MR. SEVERANCE: The same objection to this method of examination as heretofore made, and a further objection on the ground that it is irrelevant and immaterial.

By Mr. Dickinson:

Q. Begin at the bottom of page 1190.

A. I cannot recall any option given to the Federal Steel Company.

Q. I call your attention to Government Exhibits Volume III, pages 1111 and 1112, from the minutes of the Carnegie Steel Company, Limited, April 5, 1898, at which you are recorded as being present. I ask you to read those minutes, and then I desire to question you in regard to them.

Mr. Severance: I make the same objection to this method of examination of the witness as heretofore made, particularly as it is proposed to refresh his recollection by a statement made by somebody else when he was not present, he being in Europe at the time, the letter being dated from Cannes.

By Mr. Dickinson:

Q. (Continuing.) State whether or not at that time or later, the Carnegie Company entered into an arrangement with the Cambria Company with regard to rails.

A. That is a branch of the business I know nothing about.

Q. Did you know nothing about it as a director of the company?

A. I was not a director at that time.

Q. You attended the meetings.

A. As an alternate director.

Q. Well, in the capacity in which you were acting as an alternate, state whether or not it was brought to your knowledge that an arrangement was made with respect to rails between the Carnegie Company and the Cambria, and if so what the arrangement was.

Mr. Severance: I object to that as leading, and further as cross examination of the witness, who has already stated that he had nothing to do with the matter. Also it is incompetent, irrelevant and immaterial.

The Witness: When I attended the meetings of the managers as an alternate, I naturally heard all the communications and all the statements that were made by the other managers. I have no specific recollection of various things brought before the Board under those circumstances, and

particularly as this had no reference to the department in which my energies were then engaged.

Q. Did you or not have any knowledge, at that time or later, of any arrangements in regard to pooling rails, on a percentage, or any other basis, between the Carnegie Company and the Illinois Company.

MR. SEVERANCE: The same objection.

THE WITNESS: I may have had, but I cannot recall it now.

By MR. DICKINSON:

Q. I call your attention to the meeting of September 20th, 1898, of the Carnegie directors, Government Exhibits Volume III, pages 1133-1137, beginning at the bottom of page 1136, where Mr. Peacock says:—

MR. SEVERANCE: I object to refreshing the recollection of the witness in this manner, and I object to the proposed question, made up by reading from minutes, as leading, irrelevant and incompetent.

By MR. DICKINSON:

Q. (Continuing.) "Mr. Peacock: 'The Agreement between the different Rail Makers to maintain the price of Rails and protect each other on inquiries has been called off. It might be well to outline a policy to be pursued with regard to rails. I think we can run the Rail Mill full next year at $18.00, but to get some of the Western business, we would probably have to go to $17.00 Chicago.'

MR. FRICK: 'Several of the Companies have been anxious to have a Meeting, with a representative from us. Mr. Scranton talked with me on the subject, and I told him Mr. Schwab was absent, but that they might go ahead and hold their Meeting, and confer with him after his return. I also told him I thought we would enter into any amicable arrangement, provided, and only on condition that we are to run full. I do not know that they had any previous meeting, but they have fixed one for next Thursday, which Mr. Schwab expects to attend. It might be well to have an expression of the opinions of the members of the Board for his guidance.'

"MR. PEACOCK: 'If we are guaranteed a full tonnage, I would be willing to make an Agreement as to price.'

"MR. SINGER: 'I do not look for a boom, but think conditions will be better than this year. I would fill up at any price.'

"MR. GAYLEY: I would keep the Mill running full without regard to prices.' "

(Continuing.) I will ask you whether or not that refreshes your memory, and now that your mind is on that subject, whether you know that subsequently an agreement was entered into between the Carnegie Company and any other company by which the price of rails was agreed to and a percentage of production was allotted between them.

MR. SEVERANCE: I make the same objection.

THE WITNESS: I cannot recall that any agreement subsequent to this time was entered into between the Carnegie Company and other companies. That was a branch of the business that was looked after particularly by the President, and my only information on the subject would be what would be reported to the meetings of the Managers which I attended at that time from time to time, and it left no impression on my mind for any great length of time.

By MR. DICKINSON:

Q. Please turn to page 1166, at a meeting of the Carnegie Steel Company,——

MR. SEVERANCE: I make the same objection to refreshing the recollection of the witness in this way, and also on the ground that the reading of the record to him is improper and that any question based upon it would be leading.

By MR. DICKINSON:

Q. (Continuing) where at a meeting of the Board of Managers of the Carnegie Steel Company, Limited, held the 13th of December, 1898, you being recorded as also present, Mr. Peacock said:

"MR. PEACOCK: "Everything is in pretty good shape, and we have been selling more Rails. We estimate that sales of Standard Rails since November 18th are as follows:

	Sales	Options	Totals.
Carnegie	277,182	52,500	329,682
Illinois	309,713	37,586	347,299
Cambria	23,110	3,500	26,610
Colorado	17,500	....	17,500"

And also on page 1167, where there is a similar report made.

MR. SEVERANCE: I make the same objection to reading from page 1167, and the additional objection that the minutes specifically state that Mr. Gayley was at home ill.

MR. DICKINSON: That last one I had not finished.

MR. SEVERANCE: But you are starting in on page 1167.

MR. DICKINSON: I had not finished.

MR. SEVERANCE: I am objecting to your reading from it.

By MR. DICKINSON:

Q. (Continuing) December 20th, 1898, where there is a similar report made by Mr. Peacock, it appearing that you were at home ill; and again on page 1176, at a meeting of the Board of Managers of the Carnegie Steel Company, Limited,—

MR. SEVERANCE: I make the same objection to reading from this report or record.

By MR. DICKINSON:

Q. (Continuing) January 3, 1899, at which meeting you were reported as present, Mr. Bope makes a similar report as to the Estimated Sales of Standard Rails since November 18, 1898. What did the making of these reports, including the sales made by the Carnegie, Illinois, Cambria and Colorado, indicate to you, then present as an alternate director of this company, or manager?

MR. SEVERANCE: I object to that, not only on the grounds heretofore stated, but as asking for a speculative opinion of the witness, and as incompetent.

THE WITNESS: It was simply general information to the Board of the statistics of rail sales, and for the general information of the Board at the time.

By MR. DICKINSON:

Q. I will ask you whether or not you know that at that

time an arrangement of some character in regard to the sale of rails, affecting either the price or the product, existed between the Carnegie, Illinois, Cambria and Colorado.

MR. SEVERANCE: I object to that as further cross examination of the witness upon a question that he has answered two or three times.

THE WITNESS: Of my own recollection I do not know specifically and cannot refer specifically to any particular time that there was an arrangement as to rails. I know there were arrangements, but as to specific periods I cannot say.

By MR. DICKINSON:

Q. Well, approximate as nearly as you can when these arrangements existed that you say you know did exist.

MR. SEVERANCE: I object to that, in view of the witness' last answer, as a mere speculation; he has no knowledge or recollection on the subject, as he has frankly stated.

MR. DICKINSON: I understood the witness to state that he cannot give exact dates, but he does know that such arrangements existed. Now I am asking the witness to state as near as he can the years in which such arrangement existed.

MR. SEVERANCE: I object also on the ground that the answer involves hearsay, as the witness has stated that he had nothing personally to do with the matter.

THE WITNESS: I have heard it mentioned, the period embraced from 1898 to 1900, inclusive.

By MR. DICKINSON:

Q. Was it mentioned in the meetings of the Board of Managers or Directors of those companies?

A. I think it was.

Q. That is your recollection, is it?

A. That is my recollection.

Q. State whether or not the merging of the Lorain and Illinois Steel Companies was regarded by the Carnegie Company as threatening the position of the Carnegie Company and its territory.

A. I have no recollection of its having that effect.

Q. Do you have any recollection of a report being made as follows:——

MR. SEVERANCE: I make the same objection to attempting to refresh the recollection of the witness by reading from these printed documents, and on the ground that any question based upon them would be leading.

By MR. DICKINSON:

Q. (Continuing) Please examine page 1135, Government Exhibits, Volume III, which is a letter from Andrew Carnegie, read at a meeting of the Board of Managers of the Carnegie Steel Company of September 20th, 1898, at which you are recorded as being present, beginning with the words "The merging of the Lorain", and ending with the words "spending money now."

MR. SEVERANCE: I make the same objection as heretofore made, and the additional objection that this purports to be a letter written by another gentleman bearing a date mark in a foreign country.

By MR. DICKINSON:

Q. (Continuing) Read the whole of the page.

MR. SEVERANCE: The same objection.

THE WITNESS: Yes, sir.

By MR. DICKINSON:

Q. I will ask you whether or not your recollection is refreshed, and whether or not you now recall that the merging of the Lorain and Illinois Steel Companies gave concern to the Carnegie Steel Company as to its position in the territory that it hitherto had occupied.

MR. SEVERANCE: I make the same objection.

THE WITNESS: I have no recollection of the presentation of this letter to the Board, and further, the contents of this letter go to show that it was a matter of no concern to the Carnegie Steel Company whatever.

By MR. DICKINSON:

Q. What part of it shows that?

A. It says "In one sense the consolidation will probably be favorable for us; the huge concern will be more vulnerable."

Q. Does he add there "The addition of Lorain is a new element"?

A. He does not say it was a dangerous element.

Q. Then what do you understand by this: "The merging of the Lorain with the Illinois Steel Company gives that concern a position in our territory, which is to be regretted."

MR. SEVERANCE: I object to this examination proceeding, it being merely an attempt to create a debate apparently between the witness on the stand and Mr. Andrew Carnegie, as he was speaking about fourteen or fifteen years ago on that subject. It is incompetent from any standpoint.

THE WITNESS: I cannot undertake to say what was in Mr. Carnegie's mind at that time.

By MR. DICKINSON:

Q. Do you know anything about negotiations which were undertaken between the Carnegie Company and others for the formation of the Empire Company; and if so, what was the object of the formation of that company, the Empire Rail Company?

A. No, I have no knowledge of it.

Q. I ask you to look at Volume III, page 1163 of Government Exhibits, the meeting of November 22, 1898, where the following appears:—

MR. SEVERANCE: I make the same objection to reading to the witness to refresh his recollection, and I object to it on the ground that any question based upon such reading would be leading. I make the additional objection that it does not appear that Mr. Gayley was present at the meeting.

MR. DICKINSON: I think it does.

MR. SEVERANCE: No, it does not.

By MR. DICKINSON:

Q. (Continuing) I read now from page 1163:

"MR. SCHWAB: 'The arrangement suggested by Mr. Carnegie between the Federal Steel Company and ourselves has been made, and is now in working shape, excepting as to a few details in regard to selling.' "

Do you know what that arrangement was as referred to there?

A. I have no knowledge.

Q. Now I call your attention to the minutes of the meet-

ing of the Board of Managers of the Carnegie Steel Company, Limited, November 29, 1898, beginning at the bottom of page 1163 of the same volume, at which meeting you are recorded as being present, and I will read as follows:—

MR. SEVERANCE: The same objection to this as made to the previous readings.

By MR. DICKINSON:

Q. (Continuing) "MR. PEACOCK: 'At a meeting in New York last Wednesday, the Rail Making Companies came to an understanding, excepting as to a few details to be discussed in New York tomorrow.' "

Do you know what arrangement he refers to there?

A. I cannot recall anything about it.

Q. You knew it at the time, did you, or not?

MR. SEVERANCE: How can he tell if he does not know?

THE WITNESS: I did if I was there.

By MR. DICKINSON:

Q. I call your attention to a Meeting of the Board of Managers of the Carnegie Steel Company, Limited, January 31, 1899, at which you are recorded as being present, page 1190 of Government Exhibits, Volume III, and to the following passage:

"MR. PEACOCK: (In reply to the Chairman)"—

MR. SEVERANCE: I object to reading anything from the minutes, on the grounds heretofore stated; but I suggest it would be fairer, if you read anything, to read Mr. Bope's statement just before what you are proposing to read.

MR. DICKINSON: I will read anything you think is fair.

MR. SEVERANCE: I say, if you are going to read anything, I think it would be fairer to read that first. I do not say that it would be fair, but I say that it would be fairer.

MR. DICKINSON: I want to be entirely fair to you. I do not want to get anything into the record that is not a fact, or that is not in its true relation and just proportion. I am not a prosecutor in this case.

MR. SEVERANCE: I have observed that.

By MR. DICKINSON:

Q. (Reading) "MR. BOPE; (In reply to Mr. Lauder:) "We

have a great many inquires for Rails, but most of them are for small lots only. One recent inquiry was for 30,000 for Texas, but comes to us only from the grading Contractor and may not materialize. We are quoting $20.00 on small and $19.00 on large lots for Standard Rails.

"MR. PEACOCK (In reply to the Chairman):

"Unless we can stand off some of our customers, we are sold up on Rails for this year. We may have to transfer some to the Cambria Iron Company under our Agreement."

What did that mean, Mr. Gayley, in connection with the statement "We are sold out on rails for this year"?

MR. SEVERANCE: I object to that as incompetent, irrelevant and immaterial, and as calling necessarily for only a mere speculation on the part of the witness, as he has repeatedly stated, heretofore, that he knows nothing himself of any arrangement whatever. His guess would be no better than that of anybody else on the subject.

By MR. DICKINSON:

Q. Mr. Gayley, if you were present at that meeting, as recorded, as the representative of the stockholders of that company, would it be too much to say that you understood the nature of the discussion and of the questions that were presented there for consideration?

MR. SEVERANCE: I object to that as calling in question the intelligence of the witness unnecessarily, and as leading.

MR. DICKINSON: You have just impeached the intelligence of the witness. I want to show that it is ungrounded.

MR. SEVERANCE: The witness has already stated that he has now no recollection of this matter; that it was something that he did not have to do with. Now you are asking whether he has brains enough to understand the English language when it is used. I do not think that is a fair question. I will concede that he has.

MR. DICKINSON: I am asking whether he understood what was meant there by the statement: "Unless we can stand off some of our customers, we are sold up on rails for this year. We may have to transfer some to the Cambria Company under our Agreement."

By MR. DICKINSON:

Q. Did you understand that or not, Mr. Gayley?

MR. SEVERANCE: I make the additional objection that the minutes speak for themselves, and any oral testimony would be incompetent. That is in addition to the other objections heretofore made.

THE WITNESS: I know nothing whatever regarding the nature or the requirements of the agreement which is asked about.

By MR. DICKINSON:

Q. If there were an agreement, as stated, with the Cambria Iron Company, how would the question of transfer of rails come about, and what would be the occasion for such transfer, and what would the transfer mean?

A. I have already stated I do not know what the terms of that agreement were. As to the nature of the conditions under which that transfer would be made, I have no knowledge.

I would like to state, in this connection, that every manager of the Carnegie Steel Company was in charge of a great department, and had about all he could attend to to manage his own affairs. These minutes and reports, being brought before the board as matters of general information, were listened to, but they were not particularly looked into or inquired about except by the managers having them especially in charge. It can not be expected that a person can go back fifteen years and recall the meaning of statements made to the board by one of the managers in a department outside of his province.

Q. You can give us no information on that subject about which I have asked you?

A. No; it is entirely out of my province and line of work. I was simply acquainted with these things as they were presented to the board from time to time, and heard them, and perhaps was familiar with the conditions at that time; but I have been out of touch with them so long that I have now no recollection, and I could put no construction on the agreement or the methods of transfer that were in vogue between any of the steel companies.

Q. Have you had any knowledge or experience with any contracts of such a character as involves, at times, a transfer of orders from one company to another?

A. I had nothing whatever to do with that end of the business.

Q. Mr. Gayley, state whether or not you know of any ore property that was acquired by the United States Steel Corporation on the Mesabi Range prior to January 1, 1905, in which the royalty paid for the same exceeded 50 cents a ton; and if so, state what the property or properties were.

A. I do not recall any.

Q. You said a while ago, in reference to the questions that I asked you about other matters, that you had a special line of work. What was your special line of work?

A. At what time?

Q. From the time of the formation of the United States Steel Corporation up to 1905.

A. I was in general charge of the production, transportation and assembling of all raw material.

Q. Did that extend to the acquiring of ore properties?

A. It did.

Q. Were you, more than any other person in the corporation, charged with that duty, or did it come under your supervision?

A. It came under my supervision.

Mr. Dickinson: Counsel for the Government presents, to be marked for identification, copies of certain letters furnished to the Government by the United States Steel Corporation, the same being agreed to be copies of the original file copies which are on the files of the United States Steel Corporation, the said copies to be used with the same effect as the said originals which, by agreement of counsel, are to be returned to the United States Steel Corporation for its files; the said letters being marked, respectively, Government Exhibits Nos. 388 to 398, inclusive, for identification.

(The papers referred to were thereupon marked Government Exhibits Nos. 388 to 398 for identification.)

Mr. Severance: I desire the record to show that those letters are produced by counsel for the defendant, the United States Steel Corporation, at the request of counsel for the

Government, it being understood that the use of the same is objected to on the ground that they are incompetent, irrelevant and immaterial; and by producing the same, counsel for the Corporation do not consent that they be received in evidence, but merely that they may be offered in lieu of the offer of the originals.

MR. DICKINSON: Do you object on the ground that they are copies of the original copies in your files?

MR. SEVERANCE: No; I do not.

MR. DICKINSON: We offer in evidence the papers which have just been marked for identification.

MR. SEVERANCE: They are objected to as irrelevant, immaterial and incompetent. The latter objection does not go to the use of the copies instead of the originals.

(The papers referred to were thereupon marked Government Exhibit (Gayley) No. 388, March 6, 1913, to Government Exhibit (Gayley) No. 398, March 6, 1913, inclusive.)

By MR. DICKINSON:

Q. Mr. Gayley, please examine Government Exhibit No. 388, now shown you, and state to what ore deposits this letter had reference. I mean generally. I do not mean by name, but who owned them, and where they were.

MR. SEVERANCE: The letter speaks for itself. I object, as not the best evidence.

MR. DICKINSON: No, I do not think it states.

THE WITNESS: The letter refers to properties owned or controlled by Mr. James J. Hill.

By MR. DICKINSON:

Q. Were these among the properties afterwards taken over under the Hill lease?

A. I presume that they were included.

MR. SEVERANCE: You say you presume so?

THE WITNESS: I presume so. Mr. Hill, between this date and the date of the Hill lease, according to my recollection, had leased some small ore properties, and it may not have included everything that he had in mind at this time. There is no definite number of properties mentioned here.

MR. SEVERANCE: That is what I had in mind.

By MR. DICKINSON:

Q. But, in writing the letter, what I want to know is whether it covered the properties which subsequently went in under the Hill lease.

A. In a general way.

MR. SEVERANCE: He has just stated that some of these properties that he had then were leased to other people.

MR. DICKINSON: He said "in a general way."

By MR. DICKINSON:

Q. How long previous to the writing of this letter had these negotiations been pending?

A. I do not understand from this letter that there were any active negotiations on.

Q. You can not state that there were any prior to that?

A. No.

Q. Mr. Gayley, please examine Government Exhibit No. 392, now shown you. What was the status of the negotiations with Mr. Hill at that time?

A. I do not recall, at this time, that there were any active negotiations.

Q. Was the matter still pending?

A. It was frequently talked on between the Steel Corporation and the Hill interests, but, as far as I can recollect, there were no definite terms set out by either side.

Q. The matter, however, was pending?

A. It was simply kept alive.

Q. State whether or not that letter was written by Mr. Cole for the purpose of giving you information in regard to the ore deposits held by Mr. Hill and the interests he represented.

A. That is the purpose of this letter.

Q. State whether or not that estimate made by Mr. Cole was substantially correct.

A. I do not know. He evidently sent it to me.

Q. Who is Mr. Cole?

A. He was president of the Oliver Iron Mining Company. He evidently sent it as representing the best of his knowledge at that time.

Q. Had Mr. Cole any experience in ores and ore properties?

A. Vast.

Q. Over how long a period did it extend?

A. He was past forty then, and he started in as a little boy at the mines.

Q. State whether or not his reputation was that of being a careful and competent, reliable man.

A. One of the best miners of iron ore in the Lake Superior District. This report that he is forwarding was complied by Mr. Sebenius and his assistants.

Q. Who was Mr. Sebenius?

A. He was a mining engineer under Mr. Cole's direction.

Q. Do you know him? Do you know what his character and standing were?

A. He was a good engineer.

Q. State whether or not the United States Steel Corporation relied on that report as being a report made by men who were capable and competent?

A. We relied on every report from Mr. Cole's office as representing the best information that he could provide according to his ability to secure that information.

Q. What was his ability to secure information?

MR. SEVERANCE: It would not be the same.

THE WITNESS: As Mr. Sebenius, who acquired his information for him could gather knowledge of explorations of various ore properties.

By MR. DICKINSON:

Q. Please examine exhibits 390 and 391, exhibit 390 being a letter from Mr. Gayley to Mr. Frick, dated February 6, 1903, enclosing a proposition, the proposition being Exhibit 391. Look at clause 10 of Government Exhibit 391, which reads as follows: "The tonnage of merchantable ore shall be arrived at by using the following factors:

13 cu. ft.	for ore	averaging		62%	metallic iron,	or over;
14 cu. ft.	"	"	60 to	62%	"	";
15 cu. ft.	"	"	58 to	60%	"	";
16 cu. ft.	"	"	56 to	58%	"	".

If any ore 54% to 56% metallic iron is included in estimate, a factor of 18 cu. ft. per ton is to be used. If any 52% to 54% is included, 20 cu. feet per ton."

Now, state whether or not the ore generally used at that time, to wit, February, 1903, on the Mesabi Range, did not exceed 56 per cent of metallic iron.

A. By the corporation, you mean?

Q. No, generally.

A. I think it was at that time higher than 56%.

MR. SEVERANCE: So that there will be no mistake, are you speaking about natural or dry ore?

By MR. DICKINSON:

Q. What does this refer to in this table, natural or dry?

A. My recollection is that this ore was to be based on the Cleveland method of analysis, which would be the dry state.

MR. SEVERANCE: That is the reason I asked the question.

By MR. DICKINSON:

Q. State whether you referred to dry or natural state when you mentioned it.

A. It is not stated here.

Q. I am asking you.

A. I am under the impression that this was the dry state.

Q. Now I asked you whether or not at that time the ore used from that region exceeded 56%, and I understood you to say yes. State whether or not in your answer you meant to refer to the dry or natural state.

A. To the dry.

Q. Do you know whether, in the lease subsequently made with the Hill people, the percentage referred to was natural or dry state?

A. I cannot recall.

Q. I will read to you from the minutes of the United States Steel Corporation, as they appear in Volume II of Exhibits, page 605, the meeting of February 20th, 1906.

MR. SEVERANCE: I desire to make the same objection that I have made heretofore in this case to the reading of minutes to the witness.

By Mr. Dickinson:

Q. (Continuing):

"The Chairman of the Board, for himself and Mr. Frick, acting as the Special Committee, appointed March 17th, 1903, reported that at various times negotiations had been pending between the Special Committee and the

Hill interests for the acquisition of the Hill ores; that as a final result, a verbal arrangement had been made, and the Chairman stated in general terms the substance of this arrangement; also that it was expected to reduce the agreement to writing in the form of leases and that if the parties agree as to details, the arrangement would probably be consummated some time during the spring or summer.

"On motion, duly seconded, the action of the Special Committee was approved, and the whole subject-matter was referred to the Chairman of the Board and Mr. Frick with full power."

I will ask you if you have any knowledge as to whether or not at that time, to-wit: February, 1906, you had an understanding which was afterwards put in the form of writing, with the Hill people, after an arrangement for the lease of the Hill ore lands had been reached?

A. I have no knowledge or recollection as to what the understanding was at that time, and whether that was embodied in the final lease or not I cannot say. There is nothing specifically set forth there as to what that understanding was.

Q. Was there any understanding reached, prior to the execution of the Hill lease, by which it was understood that these properties would be turned over to the United States Steel Corporation, and if so when was that understanding first reached?

A. Naturally there was an understanding before the execution of the lease.

Q. How long before the matter was carried out in writing had that been reached?

A. Oh, I imagine that the thing dragged along for nearly a year.

Q. Please examine page 583 of Volume II of Government Exhibits, in regard to the Kosmerl Ore Property.

MR. SEVERANCE: I make the same objection as heretofore made to the reading from minutes.

By MR. DICKINSON:

Q. Have you examined that?

A. I have.

Q. State whether or not the proposition for the purchase of this property was entertained partly on the ground that if your company did not take it over Mr. Hill would?

A. I think it was taken because it was at that time considered a reasonable royalty and a reasonable price for the property. I observe that I stated that, if the Corporation did not take it, it was probable that Mr. Hill would take it. I think he would; but the persuading thing in the matter was that it was considered an attractive proposition to acquire.

Q. Was Mr. Hill at that time, and was your company at that time buying up ore property in the same region?

A. Mr. Hill was very active, far more so than the Steel Corporation was.

Q. At that period?

A. Yes; the Steel Corporation was always too inactive, in my judgment, in securing ore properties after its formation.

Q. Did your company or Mr. Hill get the Kosmerl ore property?

A. The Corporation.

(Thereupon, the hearing was adjourned until tomorrow, Friday, March 7, 1913, at 10:30 o'clock a. m.)

FORTY-SEVENTH DAY,

EMPIRE BUILDING,

71 BROADWAY, NEW YORK CITY,
FRIDAY, MARCH 7, 1913.

Before Special Examiner John Arthur Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the defendants, Mr. Lindabury, Mr. Severance, Mr. Reed, Mr. Kellogg and Mr. Cuthell.

STIPULATION.

In this cause it is hereby stipulated and agreed between the petitioner and those defendants represented by Messrs. Lindabury, Depue & Faulks that the statements following which show the names of various ore dealers, steel makers and blast furnace operators and the mines owned or controlled by them from which they ship respectively their ores exclusively over the Duluth, Missabe & Northern Railway or the Duluth & Iron Range Railway, together with the tonnages so shipped in 1910, were furnished by the firm or corporation whose name heads them respectively, that if called some responsible representative of such firm or corporation would swear to their correctness and that they may be received in evidence, in lieu of such testimony, but the same are excepted to as irrelevant and immaterial.

It is further stipulated and agreed that in the case of some of such mines the routing of shipments is controlled by contracts requiring shipments to be made over said Duluth, Missabe & Northern Railway or said Duluth & Iron Range Railway, (as the case may be,) during a term of years; and that in some other cases said mines are reached by the tracks of no other railroads than said Duluth, Missabe & Northern Railway or Duluth & Iron Range Railway as the case may be.

The statements above referred to are as follows:

MINES OWNED OR CONTROLLED

by

JONES & LAUGHLIN.

Mine	Range	Railroad	Shipments 1910.
Lincoln	Mesaba	D. M. & N.	318,911 tons.
Ajax (Kanawha)	"	"	
Fowler	"	D. & I. R.	204,640 "
Hector	"	"	82,393 "
Meadow	"	"	4,392 "

MINES OWNED OR CONTROLLED

by

ROGERS, BROWN & CO.

Mine	Range	Railroad	Shipments 1910.
Susquehanna	Mesaba	D. M. & N.	176,870 tons.
Iroquois	"	"	231,706 "

MINES OWNED OR CONTROLLED

by

LABELLE IRON WORKS.

Mine	Range	Railroad	Ore shipped 1910.
Wacootah	Mesaba	D. M. & N.	35,497 tons.
LaBelle	"	D. & I. R.	20,349 "
Miller	"	"	216,263 "

MINES OWNED OR CONTROLLED

by

NEW YORK STATE STEEL CO.

Mine	Range	Railroad	Tonnage 1910.
Kellogg, Larkin & Roberts	Mesaba	D. & I. R.	191,524 tons.
Knox	"	"	50,927 "

MINES OWNED OR CONTROLLED

by

M. A. HANNA & Co.

Mine	Range	Railroad	Ore shipped 1910.
Silver	Mesaba	D. M. & N.	358,432 tons.
Brunt	"	"	110,630 "
Hobert	"	D. & I. R.	None

MINES OWNED OR CONTROLLED

by

REPUBLIC IRON & STEEL COMPANY.

Mine	Range	Railroad	Tonnage 1910.
Bessemer	Mesaba	D. & I. R.	117,173 tons.
Franklin	"	"	31,613 "
Mariska	"	"	23,266 "
Monica	"	"	69,504 "
Pettit	"	"	62,457 "
Schley	"	"	13,369 "
Victoria	"	"	27,592 "
Wills	"	"	26,711 "

MINES OWNED OR CONTROLLED

by

SHENANGO FURNACE CO.

Mine	Range	Railroad	Shipments 1910.
Shenango	Misaba	D. M. & N.	995,988 tons.
Whiteside	"	"	Just opened.

MINES OWNED OR CONTROLLED

by

PICKANDS, MATHER & CO.

Mine	Range	Railroad	Shipments 1910.
Troy	Mesaba	D. M. & N.	104,056 tons.
Adriatic	"	D. & I. R.	135,685 "
Bangor	"	"	17,671 "
Corsica	"	"	277,529 "
Elba	"	"	186,982 "
Hudson	"	"	168,553 "
Malta	"	"	72,035 "
Minorca	"	"	66,511 "
Mohawk	"	"	123,176 "
Perkins	"	"	80,622 "
Spring	"	"	45,650 "
Virginia	"	"	299,046 "
Yawkey	"	"	30,439 "
Syracuse	"	"	2,363 "
Alberta	"	"	25,710 "
Sec. 30	Vermillion	"	51,650 "

MINES OWNED OR CONTROLLED

by

OGLEBAY, NORTON & COMPANY.

Mine	Range	Railroad	Shipments 1910.
Woodbridge	Mesaba	D. M. & N.	Just opened.

MINES OWNED OR CONTROLLED

by

THOMAS FURNACE CO.

Mine	Range	Railroad	Shipments 1910.
Williams	Mesaba	D. & I. R.	None.

MINES OWNED OR CONTROLLED

by

TOD-STAMBAUGH & CO., & OTHERS.

Mine	Range	Railroad	Shipments 1910.
Biwabic	Mesaba	D. & I. R.	544,243 tons.

MINES OWNED OR CONTROLLED

by

CORRIGAN, MCKINNEY & CO.

Mine	Range	Railroad	Shipments 1910.
St. James	Mesaba	D. & I. R.	Undeveloped.

MR. COLTON: The petitioner offers in evidence the testimony of E. H. Gary given in the suit of John H. Parks versus John W. Gates in the Supreme Court of the State of New York, New York County, printed in the case on appeal to the Appellate Division of the Supreme Court, First Department, at pages 74 to 113, inclusive, ending on page 113 with the words "Why certainly;" said testimony being offered in evidence for the purpose of the admissions and concessions therein contained in respect to the monopolizations or attempted monopolizations in interstate commerce in wire, wire products and nails.

MR. LINDABURY: On behalf of the defendants represented in this case by Lindabury, Depue & Faulks, we admit that Judge Gary was called as a witness in the litigation referred to in the Government's offer, and that he gave the testimony contained in the offer. We object, however, to the admission of the testimony in evidence, upon the ground that it is irrelevant, immaterial, and not binding on any of the defendants, and we make the objection specially as to all the defendants except Judge Gary.

(The testimony referred to was thereupon marked "Government Exhibit No. 399, March 7, 1913," and will be found in the book of exhibits.)

JAMES GAYLEY,

the witness under examination when the adjournment was taken, resumed the stand.

DIRECT EXAMINATION (Continued)

By Mr. Dickinson:

Q. Mr. Gayley, state where the manufacturers of steel in the United States, excepting the Tennessee Coal, Iron & Railroad Company and the Colorado Company, were mainly getting their ore supplies in the year 1911 up to October 26th. I take that date because that was the date of the filing of this petition.

Mr. Severance: Outside of the Tennessee and Colorado Companies?

Mr. Dickinson: Yes.

The Witness: With the exception of the Bethlehem Steel Company, principally from the Lake Superior region.

By Mr. Dickinson:

Q. And from what part of the Lake Superior region?

A. The greatest mining operations of the Lake Superior are on the Mesabi Range.

Q. Then were the steel manufacturers of the United States, with the exception of those two I named and the one you named, principally getting their ores for the manufacture of steel from the Mesabi region?

A. From the Mesabi region.

Mr. Severance: Would you mind asking him if he had in mind the Pennsylvania Steel Company, in answering your question?

By Mr. Dickinson:

Q. What about the Pennsylvania Steel Company?

A. I understood your question to say "principally."

Q. Yes. Where was the Pennsylvania Company getting its ores?

A. I had the Pennsylvania Steel Company in mind when I answered that question.

Q. Did you, before the acquisition of the control of the

Tennessee Coal, Iron & Railroad Company by the United States Steel Corporation, make an examination of the properties of the Tennessee Coal, Iron & Railroad Company?

A. I did not.

Q. Did you acquaint yourself with the holdings of that company and the character of its holdings?

A. I did.

Q. I will ask you whether or not you recommended to Mr. Frick that the acquisition of that company by the United States Steel Corporation would be a good acquisition from the standpoint of its raw material.

A. I did, at one time.

Q. About how long was that before the acquisition of the control of the Tennessee Coal, Iron & Railroad Company by the United States Steel Corporation?

A. About a year.

Q. Did you ever make more than one recommendation on that subject?

A. Only one.

Q. I call your attention, Mr. Gayley, just for the purpose of having you think about it and stating whether or not it refreshes your recollection, to your testimony before the Stanley Committee, on page 402, in which you are reported as saying:

"MR. GAYLEY: About six months before it was acquired by the Corporation. I recommended to Mr. Frick," and so forth.

I would like to have you, as far as your memory serves you, state the best of your recollection as to the time——

A. That was the time I had referred to. It was only once. I thought it was about a year. It was within the year.

Q. Within the year?

A. Within the year, anyway.

Q. Mr. Gayley, I call your attention to a meeting of the board of managers of the Carnegie Steel Company, Limited, held July 12, 1898, at which you are recorded as being present, and which appears on page 1117 of Government Exhibits, Volume III, and read you as follows——

MR. SEVERANCE: I make the same objection to the reading of these minutes that was made to the reading of minutes in other cases heretofore objected to.

By Mr. Dickinson:

Q. (Reading) "Mr. Gayley: Between now and September 1st, all the furnaces in the Valley are to stop one month, and this to be in addition to any time they may shut down for repairs. I think the pig market will grow stronger towards the 1st of September."

State, if you gave that information, from what sources you got the information that the furnaces in the Valley were to stop one month, and that in addition to any time they may shut down for repairs.

A. I presume I gave it from the records. I do not recall anything definitely about it.

Q. Were you, at that time, keeping in touch with the association and furnaces in the Valley?

A. Not particularly; not particularly in touch. There was a period, a brief period, when I looked after iron purchases for the Carnegie Steel Company, and I presume I kept in touch with it at that time. I do not recall exactly.

Q. This time was in 1898.

A. I do not recall exactly what period that was.

Q. You do not recall the particular incident?

A. No, sir; I do not.

Q. Do you recall anything about the sources from which you gave that information, if you gave it?

A. No; I can not recall now.

Q. We spoke yesterday of a pig iron association. State whether there were one or more pig iron associations with which you were in touch, or with which you came in touch from time to time in connection with your representing the Carnegie Company.

A. There was only one with which I came in touch, and that represented what we called the Valley furnaces.

Q. That was the one that Mr. Butler was connected with, of which we spoke yesterday?

A. Mr. Butler was the selling agent.

Q. And how long was he connected with that?

A. Oh, a good many years. I do not know exactly.

Q. Was he at that period with it, 1898?

A. Yes.

Q. Did that continue on down after the formation of the United States Steel Corporation?

A. I believe it did. I am not absolutely certain. I was not in touch with that or familiar with it.

Q. You knew Mr. Butler well?

A. Quite well.

Q. You knew his business?

A. Yes, he was a manufacturer of pig iron.

Q. Was he connected with that association, so far as you know?

A. So far as I know he was.

Q. For a long period of time?

A. He was.

Q. Give me the earliest time at which you knew that he was connected with that association.

A. Well, as I stated, I cannot exactly fix the date, but for a brief period of time I made purchases of pig iron for the Carnegie Steel Company. It was either 1898 or 1899, and at that time I came in contact with Mr. Butler as representing the sales of iron for the Valley furnaces.

Q. And did you buy from Mr. Butler, as agent for the Valley furnaces, pig iron for the Carnegie Company?

A. Yes. We bought some iron.

Q. From time to time?

A. During that period I think I made two or three purchases.

Q. Do you know whether Mr. D. G. Kerr, as representing the Carnegie Company, kept in touch with this association?

A. I do not know.

Q. Now, I call your attention to the minutes of the meeting of the Carnegie Steel Company, Limited, February 20th, 1899, Government Exhibits, Volume III, pages 1212 and 1213, at which you are recorded as being present, and I read as follows——

MR. SEVERANCE: I object, on the same ground as heretofore, to reading from these minutes to the witness for the purpose of refreshing his recollection, and I make the additional objection that the only thing on that page referred to by counsel is a letter from Mr. Carnegie.

By MR. DICKINSON:

Q. (Continuing) I read to you from the letter of Mr. Carnegie, dated February 17th, 1899, read at that meeting, as follows:

"Pig.

"Surely Lovejoy is right. To keep up price, we ought to buy a little from time to time. Every purchase, even of 5,000 tons, will tend to strengthen market, especially as market will not know the extent of our purchases. It is enough that we are in the market for Pig to make a decided effect. Don't think we ought to assume running as full as now, during next winter. Very unlikely, I think. Should not buy Pig for *winter* in any year. Besides our object is not to buy what little Pig we may need *cheap* but to get it high. Think 50,000 tons on hand surplus enough, but if not, then think we ought to be, as it were, continually buying small lots, *the higher the better.*"

I further call your attention to the minutes of the Carnegie Steel Company, Limited, meeting of September 5th, 1899, Volume III of Government Exhibits, pages 1267 and 1268.

MR. SEVERANCE: I make the same objection to calling the attention of the witness to the minutes, or reading to him from the minutes.

By MR. DICKINSON:

Q. (Continuing) I read from page 1268:

"Mr. Gayley: 'I saw Mr. Butler at the Club yesterday, and he asked what Pig Iron we would want for the first quarter of next year. I told him to name a price. He said a meeting to fix the price would be held today, and that he thought $23.00 would be agreed upon, they having already sold at $22.50 Valley.' "

I will ask you whether or not it was the policy and practice of the Carnegie Company from time to time to buy pig iron for the purpose of keeping up the price of pig iron, for the effect that that would produce upon the price of finished products.

A. It was not the policy. It was one of the few rare instances.

Q. For what purpose?

A. For the steadying of the price of pig iron.

Q. And what effect did that have upon your finished products?

A. It steadied the price of the finished products.

Q. State whether or not these instances you refer to were before or after the formation of the United States Steel Corporation.

A. This case I was speaking of was before the formation of the Steel Corporation, and a number of years aftewards, as I recollect, the matter was considered by the Steel Corporation.

Q. You spoke now of one instance; is that the only instance that you know of where a purchase of pig iron was made under the circumstances as stated by you?

A. That is all I can recollect.

Q. Just one instance?

A. Yes; that is all I can recall at this moment.

Q. Did you have anything to do with the purchase of pig iron subsequent to the formation of the corporation?

A. No, nothing directly.

Q. Were you intimately connected with the purchases made at that time, and the sources of purchase?

A. I was not.

Q. Was the market price of pig iron, as compared with previous years, high or low about April, 1900?

A. My recollection is that it was high.

Q. I call your attention to the minutes of the meeting of the Carnegie Steel Company April 9, 1900, at which you are recorded as being present, which are set forth in Volume VI of Government Exhibits, pages 1867, et sequitur.

MR. SEVERANCE: I make the same objection to reading from, or calling the attention of the witness to, these minutes on the ground that it is an improper way of refreshing the recollection of the witness, and I make the further objection that any question based upon the same would be leading; and further that any question based upon these minutes would be irrelevant and immaterial.

By MR. DICKINSON:

Q. (Continuing) I read as follows:

"MR. LAUDER: I think it would be foolish to figure for export trade on a basis of the present market prices of Pig Iron, because it is fictitious, being supported by a combination."

I will ask you whether or not the price of pig iron at that time was fictitious and supported by a combination.

A. I cannot recall now that the price of pig iron was supported. I do not know of any combination to support the price of pig iron.

Q. Do you mean that you do not recall now any particular combination that was in existence at that time to support the price, or that you have no knowledge of any combination having been made at any time to support the price? I simply want to understand what you mean to say.

A. I would explain that I do not understand that the Valley furnaces were an organization to control prices.

Q. Did they fix the price?

A. They agreed at what price they would dispose of their product.

Q. Did they sell through one agent?

A. They sold through one agent.

Q. At a uniform price?

A. So far as I know, varying, of course, at different seasons of the year.

Q. I mean at the time at which the sales were made were the prices uniform?

A. Yes, at a given time.

Q. I call your attention to the minutes of a meeting of the Carnegie Steel Company, July 9, 1900, pages 1882 and 1883, of Government Exhibits, Volume VI, at which you are recorded as being present.

MR. SEVERANCE: I make the same objection to this, and to any question founded upon such minutes.

By MR. DICKINSON:

Q. (Continuing) I read as follows:

"MR. SCHWAB: As arranged, I met the Steel people again,

but we could not agree about prices; there is a manifest disposition to restrict the output of Pig Iron; National and Federal agree to close down some of their furnaces. Have any inquiries for Billets developed?"

I will ask you whether or not you know that that was a fact, that the National and the Federal did agree to close down some of their furnaces?

MR. SEVERANCY: I object to that as clearly calling for hearsay, and as irrelevant and immaterial.

THE WITNESS: I have no recollection of it.

By MR. DICKINSON:

Q. Do you know of any closing down at any time—I mean of your own knowledge, or communicated to you officially by anyone representing your company—or of any understanding between your company, the Carnegie Company, the National or the Federal or any other company, by which it was agreed to shut down some of their furnaces?

MR. SEVERANCE: I object to that as leading, incompetent, irrelevant and immaterial, and calling for hearsay.

THE WITNESS: I have no recollection about it.

By MR. DICKINSON:

Q. I call your attention to page 570, Volume II of Government Exhibits, United States Steel Corporation meeting of January 21st, 1902, at which you are recorded as being present.

MR. SEVERANCE: I make the same objection, that this is an improper way of refreshing the recollection of the witness, and any question based upon such minutes would be leading.

By MR. DICKINSON:

Q. (Continuing) I read as follows:

"A letter dated January 14th, 1902, from Mr. Nelson P. Hulst, Vice-President of the Oliver Iron Mining Company, to Mr. James Gayley, First Vice-President, was read. This letter concerned the Wicks Ore Property on the Cascade Range, near Ispheming, which can be bought for $200,000 on the basis of 25% in cash and the balance in one or two years.

Mr. Gayley stated that this is a hard ore proposition; that it is the kind of ore we are more or less short of, and such as we need for furnace mixture; that 80% of our ore reserve is in the Mesabi Range, and we must have these low grade ores; that there are 640 acres in the tract, and that we have about 160 acres outside, making it a very big location to begin with; and that he favors the acquisition of this property."

Now, state whether or not it was a fact that in January, 1902, 80 per cent of the ore reserve of the United States Steel Corporation were in the Mesabi Range.

MR. SEVERANCE: The same objection that I made to the reading, and also that it is irrelevant and immaterial.

THE WITNESS: That was the best estimate of the mining company at that time, because it was extremely difficult to estimate tonnages of ore on the old ranges; whereas almost the exact tonnage of ore on the Mesabi Range could be determined, by reason of the different geological formation.

By MR. DICKINSON:

Q. Mr. Gayley, state whether or not between November 10, 1899—or approximately that date—and April 1, 1901, the time the United States Steel Corporation was formed, there was any substantial rise in the prevailing rates of royalty on the Mesabi Range.

A. I do not recall any substantial rise in royalty rates, at this time.

Q. What was the prevailing rate of royalty on the Mesabi Range on or about April 1, 1901, previous to the formation of the United States Steel Corporation?

A. I think it was from 25 to 30 cents a ton, and as low as 15 cents a ton. There were some made as low as 15 cents a ton.

Q. Please turn to page 1316, Volume III, Government Exhibits, to the report of January 2nd there made by you to the president, and examine it. I want to ask you a question in regard to a fact.

MR. SEVERANCE: I make the same objection as heretofore made in other cases to the inspection or reading of minutes of meetings.

By MR. DICKINSON:

Q. State, Mr. Gayley, whether or not between the date of said report, to wit, January 2, 1900, and April 1, 1901, the companies acquired by the United States Steel Corporation subsequent to the date of your report materially increased their ore reserves on the Mesabi Range as far as large tonnage in sight was concerned.

A. They did; and also all the other holders of Mesabi property increased their ore in sight.

Q. State, Mr. Gayley, if you can, by what percentage the companies acquired by the United States Steel Corporation increased their ore reserves between the dates of January 2, 1900 and April 1, 1901, on the Mesabi Range.

A. I have no data to show what increase was made during that period.

Q. Mr. Gayley, I call your attention to your testimony given in this hearing, at page 6421 of the typewritten record, as follows:

"Q. I will ask you whether there were any large bodies not set forth on page 1317, and if so, what they were.

"A. There were large quantities of ore. There were a great many mines, containing large quantities of ore, not owned or controlled by these companies still in the hands of the fee owners, and which could be purchased."

Then, on page 6424:

"Q. Now you stated that data are accessible. Have you such data showing what the other mines were at that time?

"A. I have not, but the Oliver Mining Company would know what those properties were, and my personal knowledge is that in 1900 there were available many properties, because in the first year after the Corporation was formed I presented to the Corporation property after property containing large tonnages which I recommended them to secure control of, but which they declined to take up."

Now state, Mr. Gayley, what were these properties that you presented to the Corporation, what were the names of them and what were the royalties and what was the character of the ore of the several companies.

A. Presented to what company?

Q. I read your answer, where you say:

"I presented to the Corporation property after property,

containing large tonnages which I recommended them to secure control of, but which they declined to take up."

I ask you now to state what those properties were, giving the names of each property thus presented and rejected, the royalty and the character of the ore.

MR. REED: Right out of his head?

THE WITNESS: That question is entirely too comprehensive for me to answer after a lapse of eleven years.

By MR. DICKINSON:

Q. Can you name any of those properties?

A. At the moment I can not recall any. I simply state the fact that time after time I presented various properties to the Corporation, with the endorsement of the raw material branch of the Corporation, and time after time these properties were not accepted by the finance committee; and there were so many rejections made that the president of the Oliver Mining Company complained to me that it was putting the officers of that company in a very embarrassing position with respect to the Mesabi Range, in having negotiated leases and sending them down to New York, to have them not taken up, and practically their work repudiated.

Q. You are not able, now, to name a single one of those properties?

A. Not at this moment. I can not recall them at this moment.

Q. Where were they located?

A. On the Mesabi Range.

Q. On the Mesabi Range?

A. Yes.

Q. Can you state on what part of the Mesabi Range they were located?

A. At that time the most of the property that was not taken up was in the western half of the Mesabi Range.

Q. Were those Hill ore lands, or lands that were taken over afterwards under the Hill leases?

A. I do not quite understand your question.

Q. Were any of these properties to which you have referred properties which subsequently were taken over by the Corporation under the Hill lease?

A. Evidently if I can not recall the names of these properties, it is likewise impossible for me to tell whether they came under the Hill lease or not. I have no recollection as to that.

Q. Where were the Hill properties located?

A. On the Western Mesabi.

Q. And these properties you refer to were in the Western Mesabi?

A. I said the western half of the Mesabi.

Q. Can you recall what the royalties were at which you presented these properties to the Corporation?

A. My recollection is that the royalties were about 25 to 30 cents per ton.

Q. What is the latest date at which you recall that such properties were presented and rejected?

A. I can not tell now. We were from time to time presenting properties to the Corporation.

Q. Can you give the last year in which you presented them?

A. I can not recall now. I am satisfied that there were not many presented after the acquisition of the Hill properties in 1907. After that there was not any activity in the way of mining companies presenting us ore properties for acquisition.

Q. After the Hill lease was entered into?

A. That is my recollection.

Q. Can you state, Mr. Gayley, anything about the character of these ore properties that you presented and which were rejected? I mean as to metallic content and quality.

A. My recollection is that they were good average Mesabi ores.

Q. Were they as good as or inferior to the best of the ores held at that time and controlled by the subsidiaries of the United States Steel Corporation?

A. In some cases they were above the average. In some cases I imagine they were below the average in content of iron; because the older the Mesabi Range became, the greater was the deterioration of the richness of the deposits; the deposits were made leaner.

Q. Do you recall whether or not, in addition to the royalty to be paid on any of these properties thus presented and rejected, a bonus was to be paid? If so, what was the bonus?

A. In some cases a bonus was required. In the negotiation of leases for mining property sometimes a bonus was required and sometimes not. There was no general rule. It depended on the negotiator, and the successful outcome of his negotiations with respect to that.

Q. Can you state the ranges per ton of the bonus required, in respect to those where a bonus was required, giving the highest and the lowest bonus per ton of estimated tonnage in sight?

A. I cannot give you that.

Q. What was the highest bonus that you know of at that time, in addition to royalty, that was demanded per ton for the estimated tonnage in sight?

A. I would not attempt to tell you from memory at this time, and I cannot make a simple guess at it. These matters are not fixed in my mind after this lapse of time.

By Mr. Colton:

Q. Mr. Gayley, in order to meet some of the objections of Mr. Severance, I will state the purpose for which I call your attention to certain documents. In the minutes of the documents there are expressions which, to a person not very familiar with the ore business, call for explanation, and that is one of the purposes for which I am reading.

Mr. Severance: Will you tell me to what you are going to call attention?

Mr. Colton: Yes, Volume VI, Government Exhibits, pages 1855 to 1861.

By Mr. Colton:

Q. (Continuing) Look at the Carnegie sales contract, which appears on page 1855.

Mr. Severance: I object on the same grounds as heretofore, to the presentation to or reading by the witness of these minutes, as an improper way of refreshing his recollection, and as necessarily making leading any questions founded upon such reading.

By Mr. Colton:

Q. (Continuing) I ask you to glance through the entire contract and look especially at the passage appearing on page 1861:

"And for the like consideration as aforesaid, the vendee agrees that until December 1st, 1906, it will not acquire, directly or indirectly, in fee or under lease, any properties on the Missabe Range. For the purposes hereof properties acquired by partnerships or corporations in which the vendee shall have or shall come to have a majority interest, or acquired by individuals substantially in the interest of the vendee, shall be deemed to have been acquired by the vendee. For the purpose of this article the Missabe Range is hereby defined as follows: So much of the State of Minnesota as lies South of the North line of Township fifty-nine (59) and west of the present main line of Duluth and Iron Range Railroad between Two Harbers and Tower."

State whether or not the Mesabi Range as defined in the paragraph just read to you included the entire Mesabi Range on which it was then supposed that Mesabi ore would be found, with the exception of certain lands lying to the east of the Duluth and Iron Range Railroad.

Mr. Severance: I object to that on the grounds before stated, and also as irrelevant and immaterial, and as a question not calling for expert testimony; and on the ground that there is nothing ambiguous in the language quoted. It needs no explanation.

The Witness: The question does not seem to me to be very clearly put, but I can state that the Mesabi Range was west of the Duluth & Iron Range Railroad.

By Mr. Colton:

Q. Did the contract include the entire Mesabi Range as then known?

Mr. Severance: The same objection as to the last question.

The Witness: As then known, yes.

By Mr. Colton:

Q. I ask you to look at Volume II of Government Exhibits,

at a meeting dated November 6, 1900, beginning on page 446.

MR. SEVERANCE: I make the same objection to the witness being requested to read from the minutes as I have made in other cases.

By MR. COLTON:

Q. (Continuing) I call your attention specially to page 448, beginning with the words "MR. SCHWAB: Before adjourning I would like to have read a very interesting letter from Mr. Gayley on his visit to the ore region."

Will you please read down to the bottom of page 449, and I will ask a question. On page 449 the following appears: "These drills will be taken to the Mesaba Range—east of the Duluth & Iron Range Railroad, which is called the Eastern Mesaba Range—and is territory excluded in our agreement with Rockefeller."

What is meant by the words "territory excluded in our agreement with Rockefeller"?

A. It was not embraced in the territory designated in the contract with Rockefeller as the Mesabi Range.

Q. I will read another passage:

"This is advisable, since on the execution of our contract with Rockefeller, we immediately set to work to secure this territory, and at this time control, under option, about 75 per cent. of it, and are working on the balance."

Does that refer to the eastern Mesabi?

MR. SEVERANCE: I make the same objection as leading, incompetent, and not a proper way of refreshing the recollection of the witness, and as irrelevant and immaterial.

By MR. COLTON:

Q. (Continuing) I will modify the question in response to the objection. State whether or not the sentence just read to you referred to the eastern Mesabi.

MR. SEVERANCE: The same objection.

THE WITNESS: It refers to the eastern Mesabi, and I can explain that situation to you.

By MR. COLTON:

Q. In just a moment I will be very glad to have you do it.

MR. SEVERANCE: I suggest that the witness has not com-

pleted his answer and that he should be permitted to finish it.

MR. COLTON: Is it in response to a specific question of mine?

THE WITNESS: No, it is simply illuminating your question.

MR. SEVERANCE: Counsel does not desire to have the situation illuminated, I understand.

By MR. COLTON:

Q. I will read to you.

"While in Duluth we arranged to secure 300 acres on which ore has been found, and which promises a good sizes (sic) deposit. There is a large tract lying on both sides of the railroad, which by our contracts, we could not purchase, so we wired for Mr. Corrigan of Cleveland to meet us in Ironwood, Mich., last Monday, and arranged with him that he should secure the whole tract and turn over to us that portion lying to the East."

At the time in question was there such a territory known as the eastern Mesabi Range?

MR. SEVERANCE: I object to that as having been already answered repeatedly by the witness, as leading, and that the reading to him from the record is an improper way of refreshing the recollection of the witness, irrelevant and immaterial.

THE WITNESS: There was not; that was simply a designation of our own for a certain district, and was not generally recognized as describing that district. It was a term that we coined ourselves in connection with the Oliver Mining Company, to describe the territory east of the Iron Range Railroad.

By MR. COLTON:

Q. And by what name was that territory usually known?

A. By us?

Q. No, I mean by the people at large, if it was known by any other name?

A. State land, Minnesota.

Q. No special name?

A. No special name; no, sir.

Q. I ask you to look at page 446.

MR. SEVERANCE: The same objection as made in other cases where counsel has requested the witness to read from the record.

By MR. COLTON:

Q. (Continuing) Mr. Gayley, on page 6458 of your testimony the following questions and answers appear:

"Q. What, of the Queen group of mines, was acquired prior to April 1st, 1901, in the acquisition of which, in addition to the royalty, a bonus was paid in excess of five cents a ton for the ore?

"A. The Queen group of mines was practically one mine, consisting of adjoining 40-acre lots, and operated as one mine. That property was taken over, as I recollect, for something like $250,000 as a bonus, and the developed ore in the mine at that time was not over 200,000 tons.

"Q. What was the ore estimated to be there when you took it over?

"A. I cannot recall at this time, but it would have been over 1,000,000 tons, at least, that it was expected that the mine would produce."

You recall that?

A. I do.

Q. Did you buy the mines from Corrigan, McKinney & Co. —the Queen Group?

A. We did; we bought the lease from Corrigan, McKinney & Company, and negotiated a new lease with the fee owners.

Q. Is the transaction referred to on page 446 the same transaction to which you referred in the testimony just read you?

A. It was the same transaction with the difference that the amount of the bonus was $200,000, whereas I stated it in my prior testimony as $250,000, confusing this sum with the indebtedness which we had to assume in connection with the Cleveland Cliffs Iron Company.

Q. Which transaction does that apply to, the one in the first paragraph or the one in the second paragraph? Please look at those two photographs.

A. I do not quite understand.

Q. I desire to know which transaction you were testifying

to in your testimony the other day, of the two transactions given on page 446; am I to understand that the first and second paragraphs deal with two different transactions?

A. They are both involved in the same transaction.

Q. Have you read that over?

A. Yes.

Q. After having read that over will you state the transaction more fully, just what the transaction was, if you recall?

MR. SEVERANCE: I make the same objection.

THE WITNESS: The transaction was that we were to pay Corrigan, McKinney & Company $200,000, for which they agreed to turn over, as the then lessees of this Queen Group of mines, the lease to the Oliver Mining Company, and to assist the Oliver Mining Company in securing a new lease on a lower rate of royalty. In addition to this the Oliver Mining Company was to clear off the indebtedness owing to the Cleveland Cliffs Iron Company.

By MR. COLTON:

Q. In regard to the bonus to which you testified, just referred to above: It was not simply a question of taking over a lease with so much cash bonus, was it?

A. We paid $200,000 to secure that lease.

Q. You secured something in addition to the lease at the same time, in connection with that $200,000, did you not?

MR. SEVERANCE: You might state what it was, if he did.

THE WITNESS: I would like to find out what it is. I do not know what we secured. We assumed an obligation to the Cleveland-Cliffs Iron Company.

By MR. COLTON:

Q. You got an obligation that an endeavor would be made to get a lower royalty? Is that one of the obligations you got at that time?

A. Corrigan, McKinney & Company already had the promise from the fee owners of a lower rate of royalty, the rate then being 25 cents a ton; and the mines had not been operated for quite a period. The fee owners advised Corrigan, McKinney & Company, as an inducement to operate those mines that they would make the royalty 15 cents a ton on

the better grade of ore, and, as to ore that went below 48 or 49 per cent, that it was to be 12 cents a ton.

Q. Will you turn to page 461 of Volume II of the Government Exhibits, and read pages 461 and 462?

MR. SEVERANCE: I make the same objection to the recollection of the witness being refreshed in this manner as I have made in other similar cases. I object further that any question based upon such reading would be leading.

By MR. COLTON:

Q. I read beginning with the words "Ore Sale," on page 461, under date of February 11, 1901:

"Mr. Gayley: I would like the authority of the Board for a transaction involving the sale of some ore. Some time ago we made a loan to Corrigan, McKinney & Co. of $200,000."

Does that loan have anything to do with the $200,000 referred to on page 446?

A. It is the same.

Q. You loaned money in connection with that lease?

A. Yes.

Q. In connection with obtaining the lease?

A. We loaned that to them, and it was to go as a bonus to them for securing the lease to the Oliver Mining Company on that lower rate of royalty. It was a bonus to secure a lower rate of royalty, in effect.

On page 446 it is said:—

MR. SEVERANCE: I make the same objection to reading from these minutes to the witness for the purpose of refreshing his recollection. I also make the further objection that it is irrelevant and immaterial.

By MR. COLTON:

Q. (Reading from page 446, Volume II Government Exhibits):

"As security for this loan he will give to the Oliver Iron Mining Company the lease and equipment of the Hope Mine, making complete assignment to them, and will put up as collateral the leases and stock of companies owning the leases, of the following mines:—

Crystal Falls,
Great Western,
Lincoln,
Lamont,
Paint River,
Armenia."

Was there any transfer of the lease, or was not this transaction a loan?

A. It was a loan, and secured by the leases on these properties. Providing Messrs. Corrigan, McKinney & Company could not secure for the Oliver Mining Company the lease of the Queen Group of Mines on the lower rate of royalty as promised, then that loan was secured by the lease and equipment of the Hope Mine and the assignment as collateral of the lease of these mines that are mentioned.

Q. Going back to page 461; where was the Columbian Mine located?

A. I have been trying to recall that, since reading this, but I am unable to do so. It was either on the Marquette or Menominee Range. Of that I am sure.

Q. I will ask you to give your attention to the following passage, appearing at the bottom of page 461, and on page 462.

MR. SEVERANCE: I repeat the same objection as heretofore made.

By MR. COLTON:

Q. (Continuing):

"I had a talk also with M. A. Hanna & Co., last week, in order to bring them to a proper frame of mind for dealing with us. I think it is policy for us to market at least a couple of hundred thousand tons of non-Bessemer Ore this season. As I see it, it is going to be ore well expended, through the acquirement of the larger ore reserves."

Can you explain the expression: "As I see it, it is going to be ore well expended, through the acquirement of the larger ore reserves."

A. The matter as printed is not very clear. The idea in mind was that the sales of ore would enable the Oliver Iron

Mining Company to secure to better advantage these non-Bessemer ore deposits.

Q. And among the owners of the non-Bessemer ore deposits were Corrigan, McKinney & Company?

A. They were one of the owners of the non-Bessemer deposits, but the selling of ore would have had no effect on that transaction as referred to here.

Q. It had a general effect on it?

A. A general effect, yes.

Q. Would they come in, in a general way?

A. No; we had a specific negotiation,—

Q. (Interposing) In regard to that particular transaction you had a specific contract?

A. We had a specific understanding in the matter.

Q. I call your attention to the following on page 462 of Government Exhibits Volume II:

"MR. SCHWAB: You mean, I understand, that we have plenty of non-Bessemer Mines of our own, and if we acquire other mines, it would be to sell the ore?

"MR. GAYLEY: If we are in the market, other mines are not worth so much. It is advantageous in other directions toward the acquirement of other properties owned by the same parties which own this Columbian Mine."

Who were the parties owning the Columbian Mine?

A. I cannot recall anything about it now—either the location of the Columbian Mine or the owners of it.

Q. I will name certain parties and see whether upon having the names mentioned here you recall who the owners were.

MR. SEVERANCE: I object to the proposed naming of parties as leading.

By MR. COLTON:

Q. Did M. A. Hanna & Company have anything to do with the mine?

A. I cannot recall now.

Q. Or Corrigan, McKinney & Company?

MR. SEVERANCE: The same objection.

THE WITNESS: I cannot imagine Corrigan, McKinney & Company and M. A. Hanna & Company being partners.

By MR. COLTON:

Q. I did not ask you that. I asked what is your best recollection as to whether Corrigan, McKinney & Company had any interest in the Columbian Mine.

A. I have already stated that the Columbian Mine is completely without the reach of my memory at the present time.

Q. I ask you to look at Volume II of the Government Exhibits, page 781. I would like to have you look at the minutes of the meeting of January 17th, 1901.

MR. SEVERANCE: I make the same objection as heretofore made in all cases where the witness has been asked to read from the minutes. I make the particular objection in this case, also, that this seems to be a meeting of the directors of the Oliver Iron Mining Company, at which Mr. Gayley was not present, and no action of Mr. Gayley appears to have been taken at the meeting, and no communication from him appears to have been received at the meeting.

By MR. COLTON:

Q. Then I ask you to look at the next page, page 782, the minutes of a directors' meeting of March 12th, 1901, at which you are reported as being present as first vice-president in the Chair.

MR. SEVERANCE: I make the same objection as heretofore made to the witness being asked to examine these minutes, as an improper way to refresh his recollection, and as leading, irrelevant and immaterial.

By MR. COLTON:

Q. I call your attention especially to the following:

"The vice-president reported that he had bought from the Huron Iron Company the lease of the Columbia mine for $200,000.00. This lease covers the Northwest Quarter"—I shall not read the description of the property. Does the seeing of the description of that property refresh your recollection as to where that mine was located?

A. No; it does not. Evidently the lease was purchased,

and it has not fixed itself on my mind because, as far as I can recollect, there were no subsequent operations on this property.

Q. And you do not recall the Huron Iron Company?

A. Not under that name; no, sir.

Q. Referring to the preceding page, I ask you whether you recall where the Mansfield mine is located.

A. At Crystal Falls, Michigan.

Q. That is also in Michigan?

A. I said in Michigan.

Q. On the Menominee Range?

A. Yes; it is a branch of the Menominee Range.

Q. Mr. Gayley, do you recall, without having your attention especially called to it, the sales contract of May 1, 1900, that was entered into with the Rockefeller interests, the Carnegie Company and the Consolidated Iron Mines, and the Oliver sales contract that was entered into at the same time?

A. In a general way.

Q. Can you tell me what ore properties the Oliver Mining Company had after the execution of that series of contracts that was not subject to either the Oliver sales contract or the Carnegie sales contract?

A. I think they had the Security lands, the Sheridan property and the Diamond Mine on the Western Mesabi. I refer to properties on the Mesabi Range.

Q. I am now speaking of the time after the execution of the contract.

A. We had them at the time of the execution of the contract, and naturally afterwards.

Q. You had them under lease, had you?

A. Well, they owned the fee of the Diamond mine.

Q. As to the Diamond mine, you still owned its fee, after the execution of the contracts?

A. Yes.

Q. As to the Rouchleau property: Was not that one of the properties that you turned back under the Rockefeller contract?

A. That is one of the properties that, as I recollect, was included in the rail-carrying contract.

Q. It was included in the contract of May 1, 1900?

A. My recollection is that it was.

Q. Do you recall any other properties than this contract named that were not included in and subject to the terms of that sales contract or, as you call it, the rail-carrying contract?

A. I can not recall any at the moment.

Q. You understand that it is the same contract to which I called your attention at the beginnig of this testimony?

A. The contract between the Rockefellers and the Oliver Mining Company.

Q. In point of tonnage, approximately how much did the Oliver Mining Company have in the way of ore on the Mesabi Range that was not subject to the Oliver sales contract of May 1, 1900?

A. That would be difficult to tell, because all the lands were not well explored. They were known to contain a good-sized body of ore, but the exploration was very meagre.

Q. Was it primarily its fee lands that were not subject to that?

A. The fee lands, and then I think it was the Sheridan mine which was not thoroughly explored. As a matter of fact, I question if any of the ore properties on the Mesabi Range were explored to the limit.

Q. The question I have here is whether the leaseholds that you had at that time were primarily subject to the provision of the Oliver sales contract and the Carnegie sales contract —leaseholds of the Oliver Mining Company I am now speaking of.

MR. SEVERANCE: I object to that as not the best evidence. The contract will speak for itself.

THE WITNESS: The Sheridan mine, accumulated long before, was a leasehold, and it was not subject to that contract.

By MR. COLTON:

Q. Do you recall any others?

A. Not now.

Q. Mr. Gayley, assuming that you received a report as of January 1, 1908, from the Oliver Mining Company, setting

forth its ore estimates, and among those estimates as of that date it used the expression "standard Bessemer ore," would the term "standard Bessemer ore" be intelligible to you?

A. It would.

Q. What would it mean?

A. Ore that would make a Bessemer pig iron.

Q. And any ore that will make a Bessemer pig iron is "standard ore?"

A. Yes.

Q. The use of the word "standard" adds nothing to it, then?

A. Nothing. It means simply an ore that would make a Bessemer pig iron.

Q. And what would you understand by the expression "standard non-Bessemer ore?"

A. Standard non-Bessemer at that time was an ore that would have been merchantable in the market.

Q. In respect to what qualities are you referring as merchantable ore? Is my question clear?

A. I think it is. It was ore that was rich enough to be used in competition with ores of other ranges of non-Bessemer quality.

Q. Now, under "standard non-Bessemer" would you or would you not expect to find that class of ore that was spoken of yesterday or the day before, which was used simply for mixing, a low grade of ore that could be used in mixing in certain instances?

A. I do not understand that question.

MR. SEVERANCE: You are getting two kinds of things confused.

By MR. COLTON:

Q. Would you expect to find it?

A. Where?

Q. Would you expect to find it classified as "standard non-Bessemer?"

A. I would expect that among the standard non-Bessemer ores referred to there would be ore that under certain fav-

orable conditions could be intermixed with standard Bessemer ores and still produce a Bessemer iron.

Q. Are the silicious ores, non-washable, of a generally lower grade or higher grade than standard Bessemer?

A. About ten per cent lower in iron.

Q. And in efficiency?

A. I do not understand that.

MR. COLTON: I will withdraw that question.

(Whereupon, a recess was taken until two o'clock p. m.)

AFTER RECESS

JAMES GAYLEY,

the witness under examination when the recess was taken, resumed the stand.

DIRECT EXAMINATION (Continued)

By MR. COLTON:

Q. Mr. Gayley, state whether or not during the period from April 1, 1901 to October 25, 1911, inclusive, approximately 75 to 80 per cent of the ore consumed in the United States for steel-making purposes came from the Lake Superior district.

A. I can not tell you as to that; I have not been identified with the iron and steel business since 1909.

Q. Consider my question as applying up to the time you left the United States Steel Corporation.

A. I have no accurate recollection or data showing that; I know that the great bulk of the ores used for steel-making did come from the Lake Superior district, but I am not able to approximate any definite percentage.

Q. During that period?

A. Yes; up to 1909.

Q. From 1901 to 1909?

A. Yes; from 1901 to 1908, inclusive.

Q. Would the same thing be true of the period from 1895 to 1908, inclusive?

A. I think more particularly so, 1895 to 1901.

Q. No, for the entire period, 1895 to 1908.

A. I think more particularly so, because in the early part of that period the great bulk of the ores came from the Lake Superior region. Latterly the Pennsylvania Steel Companies and the Bethlehem Steel Companies have been getting a large supply of ore from abroad.

Q. When would that "latterly" period begin, that you have referred to?

A. I would say in the last five or six years.

Q. Would you undertake to say that there was any substantial change in percentage of the ore coming from the Lake Superior district during the period beginning 1905 down to 1908?

A. I do not think there was.

Q. State whether or not the United States Steel Corporation, at the time of its formation, acquired through its subsidiaries control of approximately 600,000,000 tons of the then estimated and known and commercially available ore in the Lake Superior district.

A. I have not any accurate data; I presume that it acquired quite that much ore.

Q. Of course this is approximate; but was it substantially larger than that, in your opinion?

A. That depends a great deal on what allowance you make for ore in the old ranges, and that is a movable and variable factor; one engineer might estimate three or four times as much as another engineer.

Q. Of course, I am asking you only as to the then known and commercially available ore. You understood that that was what I was speaking of and had reference to, and not to any knowledge of developments subsequent to that?

A. That is my understanding in making my reply.

Q. Now, as to the Mesabi. Can you state approximately what the tonnage acquired by the United States Steel Corporation at that time was?

A. I can not; I do not recall.

Q. Was it more or less than 600,000,000 tons?

A. My answer as to 600,000,000 tons was, as I took it, in reply to a question of all ores.

Q. Yes, it was.

A. Therefore the Mesabi would be a constituent part of that sum.

Q. Mr. Gayley, did you, at the time or about the time of the formation of the Corporation, become familiar with ore estimates prepared in connection with the organization of the Corporation?

A. I do not recall having been asked, before the formation of the Steel Corporation, to look into their holdings of raw material.

Q. Were you within a short period after the formation?

A. After the formation my recollection is that estimates were made of ore reserves.

Q. By whom?

A. Naturally by the Oliver Iron Mining Company.

Q. Were those estimates in existence during the time you were vice-president of the United States Steel Corporation?

A. Yes; ore estimates.

Q. To what did those estimates apply?

A. I remember estimates being made showing the estimated holdings of the Steel Corporation on various ranges and on the several ranges.

Q. Were those estimates in writing?

A. Oh, yes.

Q. Where were those estimates kept?

A. They were kept in my office.

Q. What did you do with those estimates when you left the vice-presidency of the United States Steel Corporation?

A. I left them with my successor.

Q. Who was your successor?

A. My successor was Mr. Kerr.

Q. And those estimates were there when you left?

A. Any estimates relating to ore reserves that I left in the office were naturally there; whether they were retained in the office, or whether they were forwarded to the Oliver Mining Company's office in Duluth I do not know.

Q. Would they be in the custody of one or the other officers?

A. They ought to be.

Q. Do you know of an estimate by Hulst or Selwood made

at or about the time of the formation of the United States Steel Corporation?

A. I know that Doctor Hulst, prior to the formation of the Steel Corporation, was asked to come to New York and confer with Mr. Schwab.

Q. Do you know in what connection he was called to come to New York?

A. Mr. Schwab wanted to consult him regarding ore matters in the Lake Superior region.

Q. Do you know whether that estimate extended not only to the holdings of the United States Steel Corporation but generally to the holdings of the Lake Superior district?

MR. SEVERANCE: Just a moment. I object to that. The witness has not said that any estimate was made. He merely says that he knows that Doctor Hulst came down for a consultation with Mr. Schwab, but he does not say that he made any estimates. The question assumes that he had made estimates.

By MR. COLTON:

Q. Do you know whether there was any estimate made by Doctor Hulst?

A. I will answer that as I had intended to answer it. I know nothing at all of the report or the nature of the report that he made to Mr. Schwab.

Q. Do you know of Mr. Selwood coming to New York before the formation of the Corporation?

A. I do not.

Q. And do you know of any estimate made by Mr. Selwood?

A. I do not.

Q. Did the Oliver Mining Company, or did you as vice-president of the United States Steel Corporation, have in your possession any estimate of the known ore, or the ore in sight in the Lake Superior district as a whole?

A. I have already answered that question.

Q. I do not recall having asked that question.

A. I have already stated that my recollection is that after the formation of the Steel Corporation estimates were made

of the holdings of ore of the Steel Corporation in the Lake Superior district.

Q. Now I ask whether the estimates extended not only to the holdings of the United States Steel Corporation, but to outside companies, in some such general form as that estimate that you made.

A. In a general way I think that the Oliver Mining Company's engineers, to the best of my recollection, made some guesses as to the holdings of other parties.

Q. And by "guesses" you mean estimates?

A. Estimates, so far as they were able to obtain information at the time, which of course, not having access to all the details of exploration, were a good deal of a guess.

Q. Would that be in writing?

A. Probably it was; I can not recall as to that.

MR. COLTON: The Government wishes to give notice that it would like to have those estimates.

MR. SEVERANCE: Give us a written notice so that I can pass it on to the other people. Serve a notice on us and I will see if we have anything about it.

CROSS EXAMINATION

By MR. SEVERANCE:

Q. You testified somewhat as to your functions in the Carnegie Steel Company. I wish you would detail the branches of the business that you were connected with previous to the organization of the United States Steel Corporation.

A. It had more particular reference to the ore mining department in the Lake Superior region, the operations in a general way of the Bessemer Railroad, the Conneaut Docks and other docks in which they were interested, and the steamships owned by the Carnegie Company on the Great Lakes; also their raw materials that might be used by the Carnegie Steel Company.

Q. You had been in charge of some of the works at times?

A. I had.

Q. When was that?

A. I was in charge of the blast furnaces of the Edgar

Thomson Steel Works beginning 1885, and then in 1892 I was made general manager of the whole Edgar Thomson Works, furnaces and steel works; and then in 1896 I went into the general offices of the company, in their Pittsburgh office.

Q. You stated in answer to counsel that at one time you had some direct experience in the purchase of pig iron. Do you remember when that was, and how it happened that you were engaged in that work?

A. It was either in 1898 or 1899 that the person who usually attended to making any purchase of iron, when it was needed to be purchased, was absent, and it temporarily fell to my lot to look after it in his absence for a brief period.

Q. And during that time did you have negotiations with Mr. Butler, representing the Valley furnaces?

A. Yes.

Q. What was the method of procedure, when Mr. Butler had iron to sell, in negotiating with manufacturers?

A. I can only mention the method of procedure during the time when I was filling in this gap as purchasing agent, as he had called upon me to advise that they had, for instance, 50,000 tons of iron to sell at a certain price. I think we bought that amount. That was all that was available, he advised, at that time. Somewhat later I recall that he stated that he could secure 25,000 tons more at the same price, which he offered to us, but which I do not think we availed ourselves of to purchase.

Q. Did it come to your knowledge at any time that Mr. Butler offered iron to the Carnegie Company at prices that were not satisfactory to the company, and went back to his furnace men with counter offers?

A. My understanding was, from that limited experience, that he presented to the Carnegie Company the amount of iron that the Valley furnaces were disposed to sell at that time. There may perhaps have been some who were not inclined to sell, but subsequently, if others consented to release a certain amount of iron, it enabled him to make an offer of a further quantity of iron. That was my understanding of the matter.

Q. From your dealings with him you did not get the impression, did you, that the Valley furnace men had all agreed

among themselves as to prices of pig, and advised him that he could sell at that price?

A. My understanding of the situation was that he was a general clearing house for the furnaces in the valley, to dispose of their tonnage of pig iron, and that he familiarized himself with the market conditions. In other words, it seemed to me that they were in about the same position as the fruit growers in the West, who associated themselves together and selected a common sales agent to dispose of their property. It was advantageous in this way, as relieving the officers of the furnace companies in the Valley from traveling over the country and spending time soliciting orders for pig iron, and it enabled them to give their time to the management of the business, knowing that their product would be disposed of on the same terms as that of the other furnaces through this common selling agent.

Q. During this time when Mr. Butler was acting as selling agent, did the prices of iron fluctuate during the seasons?

A. Iron always fluctuated in price.

Q. So that the different gentlemen manufacturing pig iron in the Valley did not get the same prices for pig iron through the season?

A. I cannot recall a season where pig iron did not fluctuate. It fluctuated considerably.

Q. And the result of that would be that furnace men who had sold out at one figure might get a different price than a furnace man who had iron coming along a little later to sell, that had not been disposed of at the time the first men sold?

A. Naturally.

Q. You were asked as to whether it was not advantageous to the steel manufacturers to have pig iron at a high price and to have ore at a high price, and I think you testified that it was advantageous to the Carnegie Steel Company at that time, in your opinion. How did the situation as to the Carnegie Steel Company in that regard differ from that of other manufacturers, if at all, in that regard?

A. The condition of other manufacturers was precisely the same. I will put it this way: The relation of the other steel manufacturers towards the price of pig iron was identical with that of the Carnegie Steel Company. In other words

all manufacturers of steel were interested in the same proposition.

Q. That is to say, when pig iron was at a certain figure, the price of steel products bore some relation to that figure, and if the price of pig iron went up the price of steel products went up?

A. It did.

Q. What was the interest of pig iron manufacturers, other than the Carnegie Company, in the price of ore, as compared with the interest of the Carnegie Company in its price?

A. It happened on a number of occasions, to my personal knowledge, that independent furnaces making nothing but pig iron, and purchasers or ores, were anxious to have the price of ore kept up. That might vary with different iron-producing concerns.

I know, as a matter of fact, in 1904, two presidents of furnace companies in the east told me that they were anxious to see the price of iron ore maintained at a high price, although they were purchasers. The reason, in their case, was that they had bought liberally of ore at high prices, and were carrying over a considerable quantity, and if the price of ore was reduced it would mean the marking down of the price on their books at considerable loss. It was a question that affected various furnace companies in a different way.

Q. Then, as I understand it, the situation that was developed by counsel from you as to the attitude of the Carnegie Company relative to the prices of pig iron and the prices of ore, and as to the effect of the relative prices of those two commodities upon the steel market was not in any way peculiar to the Carnegie Company?

A. Absolutely not; and there was an advantage in keeping up the price of ore in order that the price of pig iron and steel products should be kept up; because they not only had contracts on their books at high prices, but they also had to dispose of large quantities of steel products that had gone into warehouses; and had the price of ore or the price of steel lowered, it would mean serious loss in the marketing of these warehouse products.

Q. Do you remember this question coming up before the executive committee of the Steel Corporation, after it was

organized; that is, the question of making purchases of pig iron for the effect it might have upon the prices of steel products; and that Judge Gary, in that meeting, disapproved of such buying, and that, as a matter of fact, it was decided to buy only such pig iron as might be needed?

MR. DICKINSON: This is objected to as incompetent, hearsay, and a self-serving statement.

THE WITNESS: I remember that matter being discussed at a meeting of the executive committee of the Steel Corporation.

By MR. SEVERANCE:

Q. Do you remember the result was as I have stated?

A. That is my recollection of the attitude of Judge Gary and the action of the committee.

MR. DICKINSON: Is there any date fixed there?

MR. SEVERANCE: No; but I think perhaps we can get it for you.

MR. DICKINSON: We object to his testifying as to the action of the committee, on the ground that the minutes of the committee, if they show such action, are the best evidence.

MR. SEVERANCE: That was at a meeting in May, 1903.

MR. DICKINSON: Suppose you ask Mr. Gayley.

MR. SEVERANCE: I am just telling you, for your information.

By MR. SEVERANCE:

Q. Do you remember when that meeting was, or do you not recall, Mr. Gayley?

A. I thought it was 1902 or 1903.

Q. Coming to this question of the ore supply that you secured: In 1896 what mines, if any, did the Oliver Iron Mining Company or the Oliver Mining Company have?

A. I think only the Mesabi Mountain and Lone Jack.

Q. Were the Rockefeller interests in the market at that time selling ore?

A. They were.

Q. By the way, while I think of it in passing: What were known as the Rockefeller interests, that is, the Consolidated Iron Mines, were never engaged in manufacturing at all, were they?

A. Never.

Q. Their position was simply that of owners of mines and transporters of ore?

A. Yes; and sellers of ore.

Q. And sellers of ore?

A. Yes.

Q. The Lake Superior Consolidated Company was the Rockefeller Company, was it not, that held title to these mines?

A. It was.

Q. And that company owned the Missabe Road, did it not?

A. It did.

Q. In addition to owning the Missabe Road, did the Consolidated Mines have any vessels?

A. Yes, sir.

Q. They had a fleet on the Lakes?

A. They had.

Q. In making these arrangements concerning which you have been interrogated at considerable length by counsel, I mean the arrangement between the Oliver Iron Mining Company and the Rockefeller interests—using that general expression—what was the thing that the Rockefeller interests were particularly interested in? Was it the matter of the sale of ore, the leasing of ore, or the transporting of ore?

A. They were interested, particularly, in the transporting of ore. In the early days of their opening up of the Mountain Iron Mine, which was then their great mine, they sold ore in Cleveland at a price that practically only netted them the profits of transportation.

MR. DICKINSON: Has he fixed the time of that?

By MR. SEVERANCE:

Q. When was that?

A. That was about 1896, I think.

Q. Mr. Gayley, in these arrangements which involved the turning over to the Rockefellers—I use that expression because that is the general expression that seems to appear in your minutes—of mining properties that had been secured by the Oliver interests, was any royalty reserved to the Rockefellers, as a rule, over and above the royalty that was paid to

the fee owners?

A. Yes; I think there was at the mines at Virginia. That is the only place that I know of.

Q. How did it happen that the Oliver Company went into the market and bought mines after having entered into the arrangements, which were fully detailed in the direct examination, under which they were to look to the Rockefellers for such additional mines as they might need, or such additional ore as they might need?

A. The Oliver Mining Company was operating, in addition to its Virginia mines, the Mountain Iron Mine. The tonnage that was being taken from the Mountain Iron Mine as stripped meant that the depth of mining was increasing every year, until it was becoming burdensome to take the ore out and to drain the mine. Contiguous to this Mountain Iron Mine were extensions of the same body of ore owned by the Rockefellers, and the Oliver Mining Company requested them to turn over these adjacent properties, in order to facilitate their mining operations and open up to them a larger body of ore that would likewise give them a better selection of ore. For instance, for securing Bessemer ore, with a large exposure of mining pits, there was a better chance for selecting Bessemer grades as needed. The Rockefeller interests appeared very indifferent when Mr. Oliver presented the matter to them.

MR. DICKINSON: I except to the witness stating anything that passed between Mr. Oliver and the Rockefeller people unless Mr. Gayley was present and heard, himself, what passed. I object to his stating any hearsay.

MR. SEVERANCE: Mr. Gayley, upon direct examination by counsel for the petitioner, they insisted upon your stating what was said to you by Mr. Oliver with reference to these matters. Now they object to your stating what was said to you by Mr. Oliver.

MR. DICKINSON: Did you not object?

MR. SEVERANCE: But I will ask you to go on with your testimony and follow the same course that they insisted on in the direct examination.

MR. DICKINSON: Did you not object?

MR. SEVERANCE: I did.

MR. DICKINSON: Well, then, we will put in the same objection. If one is good, the other is.

MR. SEVERANCE: No, you are mistaken. This is cross-examination.

By MR. SEVERANCE:

Q. Go ahead, Mr. Gayley.

A. And then we proceeded; that is, the Oliver Mining Company proceeded to secure other ore properties on the Mesabi Range, as a matter of self-protection.

Q. What transpired after that? Did you turn those properties over to them pursuant to this arrangement concerning which you were interrogated by counsel?

A. I have already stated that later Mr. Oliver and I called on Mr. Gates in reference to this subject and he advised that he would not consider transferring any properties to us contiguous to the Mountain Iron mine unless we would turn over to him, without any obligation on their part, and then they would begin over again and take up the question *de novo* of assigning to us or leasing to us additional ore properties. Under that proposition we declined to comply with Mr. Gates' request.

The matter went along and later we had assurances from Mr. Gates that if we would, as a matter of formality, turn those properties back to them, they would lease us the additional property that we had originally demanded, in addition to these properties the Oliver Mining Company had secured, and which were to be returned to us, except with an arrangement that they should haul the ore over their railroad.

Q. And that arrangement was the one that was consummated, concerning which you were asked by counsel?

A. That arrangement was finally consummated.

Q. What rate of freight was provided for, from the Mesabi Range to Lake Superior?

A. Eighty cents a ton.

MR. DICKINSON: Are you calling for the rate of freight shown in the contract?

MR. SEVERANCE: I will ask him.

By MR. SEVERANCE:

Q. What was the rate of freight that was current up there from the Mesabi Range?

A. Eighty cents a ton.

MR. DICKINSON: I understood you to ask what was the rate under that contract. Now you are asking him what the rate was that was current. Is that the same?

MR. SEVERANCE: I will ask him both.

MR. DICKINSON: Was it the same rate?

THE WITNESS: The same rate.

By MR. SEVERANCE:

Q. From the time the Mesabi was opened, was not that rate always eighty cents?

A. Always.

Q. And that continued to be eighty cents all through the time you were vice-president of the Steel Corporation, did it not?

MR. DICKINSON: Did you understand Mr. Gayley to state that this contract that he entered into with Mr. Gates provided for an eighty cent rate?

MR. SEVERANCE: Yes.

MR. DICKINSON: And that he is now speaking as to the terms of the contract, in that answer?

MR. SEVERANCE: I suppose as to that one particular answer he was.

MR. DICKINSON: This testimony is objected to on the ground that the contract itself is the best evidence.

(By request, the stenographer repeated the last question as follows:)

"Q. And that continued to be eighty cents all through the time you were Vice-President of the Steel Corporation, did it not?"

THE WITNESS: It did.

By MR. SEVERANCE:

Q. That rate obtained from the beginning from that region, over such part of the Mesabi Range as was reached by the Iron Range Road and the Great Northern?

A. It did.

Q. Mr. Gayley, is it not a fact that when mines were opened up on the range it was customary for the person opening those mines to contract with one or the other of the three roads for the transportation of the ore?

A. It was, with very few exceptions.

Q. Was that so not only as to mines of the Corporation, but generally so?

A. Yes, generally so.

Q. It was not feasible, was it, for two railroads to operate at the same time in an open pit mine?

A. I do not know of any case where it was done.

Q. It would not be physically feasible for two roads to be running in on those tracks?

A. No, it was never considered to be a practical proposition.

Q. Now, this freight rate of 80 cents included what? Did it include anything in addition to merely setting in the empty cars and hauling them to the Lake front?

A. A good deal more.

Q. What was there in addition?

A. It required not only hauling the ore cars from the mines to the dock, but it required the discharge of those ore cars into the vessels through the docks; it required in many cases the storage of large quantities of ore in the docks, and in addition it required the railroad companies to procure an extraordinary number of cars because the conditions of mining were such that the cars themselves had to be used for storage. Take for illustration an open pit mine operated by a steam shovel. There is no opportunity for grading of ore with a steam shovel; it cuts a swath of ore along the edge of the bank, and everything goes into the car. There is no opportunity to grade. After the cars are filled they are taken out and each car in sampled and promptly analyzed, and those conforming to one grade are drilled out and put together, and the grades are partially made at the mine and very often the ore is held at the docks until the analysis is forwarded for the purpose of grading. Quite frequently it would happen that ore might be dug out by steam shovel in comparatively small quantities; that necessitated the railroad holding this ore for a considerable period of time until additional quantities of

ore of the same chemical grade could be secured, enough to make a cargo lot. That was an additional burden to the simple hauling of the ore from mine to Lake.

Q. Did the railroad company own the docks?

A. They did.

Q. Did they operate the docks?

A. They did.

Q. Are those docks extensive?

A. Very.

Q. Where are the Iron Range docks located?

A. At two Harbors.

Q. Where are the Duluth, Missabe & Northern docks located?

A. Duluth.

Q. Where are the Great Northern docks located?

A. West Superior.

Q. Does each one of those railroads perform the same general kind of service that you have detailed?

A. It does.

Q. Do you know anything about the Soo Railroad now being interested in the ore traffic, or is that since you retired from active business?

A. That is since I left. You mean on the Mesabi?

Q. No, from the Cuyuna.

A. I do not know that.

Q. What is the fact as to whether the greater proportion of the ore cars are returned empty to the mines?

A. They are.

Q. That is, only a small percentage have a return haul?

A. A small percentage have a return haul of coal for mining operations.

Q. Is the general course of the Iron Range & Missabe up and down hill from the mines to the top of the hill, just above the Lake, or is it level?

A. There is a very steep descent from the bluff above the Lake to the docks.

Q. How is it on the other side of the bluff, from there to the mines?

A. On the Iron Range Railroad it is up and down hill like the waves of the ocean. The Duluth, Missabe & Northern has, I think, about a twenty mile stretch through Muskeag

swamp, which is practically level, and outside of that it is hilly.

Q. No distinction is made in the rate by reason of any difference in distance? There is no distinction made by reason of the difference in distance from a particular mine to the docks?

A. No.

Q. It was a blanket rate over the whole district?

A. A blanket rate, except in the Iron Range from Tower and Ely.

Q. What was the rate over the Iron Range from Ely?

A. One dollar.

Q. And from Tower?

A. Ninety cents.

Q. Your attention has been called to a traffic agreement entered into in July, 1900, between the Carnegie Company and the Oliver-Snyder Company of the one part, and the Federal Steel Company of the other part, fixing for a term of years a rate of 60 cents on ore from points on the Vermillion Range. What companies were there at that time that were interested in the mines the product from which would be shipped under that contract or shipped over that road from that region?

A. Principally the Oliver Iron Mining Company and to a much smaller extent the Minnesota Iron Company.

Q. The Minnesota Iron Company owned the Iron Range Road, did it not?

A. It did.

Q. Consequently the only ore that would be transported from that region was either the ore of the company which owned the stock of the Iron Range Road, or the ore covered by the contract?

A. That is correct.

Q. There were no outside shippers who were in any way discriminated against by that contract, then, were there?

A. No, that only applied to Tower and Ely; and the Minnesota Iron Company and the Oliver Iron Mining Company were the only two shippers from that section.

Q. Now, that ore on the Vermillion range, Tower and Ely, was what was known as Old Range ore?

A. It was classified as Old Range ore by reason of its structure and the geological formation of the mines.

Q. And it was commonly regarded as ore of the same general character as ore from the mines of Michigan and Wisconsin?

A. Are you speaking of Vermillion?

Q. Yes.

A. The Vermillion mines proper were very much like the hard ores of the Marquette Range, such as the Cliff-Shaft ore of the Cleveland Cliffs Company. It might be called the eastern extension of the Vermillion range; at Ely they resemble the ores of the Marquette and Gogebic ranges, soft hematite.

Q. They were different from the Mesabi ores?

A. They were.

Q. And were more nearly like the ores in Michigan and Wisconsin?

A. On the Marquette and Gogebic ranges.

Q. What was the freight rate from the Marquette and Gogebic ranges to the Lake at that time?

A. The freight rate from the Gogebic range was 40 cents to Lake Superior, and from the Ishpeming mines in the Marquette district my recollection is that it was 32 or 35 cents, I have forgotten which; but I think it was 32 cents.

Q. So that the ore of the same general character in Wisconsin and Michigan had the benefit of an ore rate from 20 to 28 cents less than the rate fixed by this contract, to wit, 60 cents from the Vermillion Range?

A. Yes, it had.

Q. How did the Lake rate to the ports reached from the Gogebic and these other ranges in Wisconsin and Michigan, to Lake Erie ports, compare with the freight rate from Two Harbors?

A. The freight rate from the Marquette District was lower than the Two Harbors rate. That from the Gogebic was about the same as the Two Harbors rate.

Q. At the time this contract was made did the Oliver Iron Mining Company control ore lands in the Gogebic and Marquette Ranges?

A. It did.

Q. And were they shipping from these mines?

A. They were.

Q. Returning for a moment to the subject of this arrangement between the Carnegie Company and the Rockefellers, what advantage, if any, is it to a large manufacturing company, such as the Carnegie Company, to have a variety of ores available?

A. It is necessary.

Q. Why?

A. To be able to make a selection of ores suitable for various kinds of products. The larger the steel manufacturing concern, the greater variety of steel products they would make, and therefore they needed a variety of ore and they needed a reserve of ore in order to provide the variety and kind of ore that was necessary from year to year.

Q. Did the Carnegie Company as a matter of fact need this variety of ore that you speak of at that time?

A. Yes.

Q. The Rockefeller interests had a variety of ore, had they not, different from the ores controlled directly by the Oliver Iron Mining Company?

A. You mean on the Mesabi?

Q. Yes.

A. On the Mesabi Range, yes.

Q. And was the fact that they had this variety of ores any inducement to you to enter into the arrangement you did with them, relative to supplying you with ores?

A. We wanted to get the kind of ore, and we wanted to get the quantity too.

Q. That they possessed?

A. That they had.

Q. What do you say as to the advisability or necessity of a large steel manufacturing concern possessing a substantial ore reserve, considered purely from a business manufacturing standpoint?

A. I consider it vital to their permanency and existence.

Q. How many years' ore reserve do you consider good business judgment renders it advisable for a manufacturing company to have—a large company?

A. I always contended in the Corporation that is should have fifty years' supply.

Q. Why did you take that position?

A. I think that, looking ahead, that is a small enough margin with respect to the investment of large sums of money in the work and the equipment for manufacturing, without a substantial insurance of raw material to supply the works that have been created with the capital of the corporation.

Q. When you say fifty years' supply, do you base that upon the then consumption?

A. I based that on the then consumption, assuming that acquisitions could be made from time to time over a period of years to maintain that for about fifty years.

Q. That is, you mean that at all times there should be a fifty years' supply?

A. At all times fifty years' supply.

Q. And as fast as a certain amount of ore is consumed an equal amount should be purchased; is that what you mean?

A. I always contended, both in the Carnegie Steel Company and the Corporation, that in no year should the acquisitions of ore under any consideration be less than the consumption.

Q. Now, as a matter of fact, what success did you have in inducing the finance committee and the directors and officers of the Steel Corporation to secure a fifty years' supply of ore?

A. I had no success.

Q. About how long a supply did they have ahead in reserve during your incumbency of the vice presidency of the Corporation?

A. I do not think at any time they had over thirty to thirty-five years.

Q. You were asked by counsel whether you had some estimates made by your department of the holdings of other steel manufacturers, and you said you did have such estimates—or guesses, I think you put it. From the information that came to you what would you say as to whether the Steel Corporation, during the period you were connected with it, in proportion to its manufacturing output, had a greater or less ore reserve in years than their large competitors?

MR. DICKINSON: I object to that. He has not shown what the competitors had, or that he had any knowledge of what they had. I object to that as too general, and based upon

insufficient evidence of knowledge. He has already stated that he could not say anything about the estimates, whether they were correct or not.

MR. SEVERANCE: Of course if Mr. Gayley does not know he will say so.

THE WITNESS: I have no data as to what the accurate holdings were of the steel-producing companies outside of the Corporation. It was thought—

MR. DICKINSON: I object to his saying what was thought.

MR. SEVERANCE: I do not know what he is going to think.

MR. DICKINSON: He says it was thought; he does not say who thought it or how he got the information as to who thought it; I object to that as being an improper statement for him to make.

MR. SEVERANCE: Mr. Gayley understands that he is not asked to speculate. I do not know; that may be a form of expression. I do not know what he is about to say.

THE WITNESS: Stop right there with my answer.

By MR. SEVERANCE:

Q. Did you learn from time to time, when you were Vice-President of the corporation, in charge of the raw material department, that the large competitors of the Corporation were acquiring ore reserves?

A. They were.

MR. DICKINSON: I object to that on the ground that the sources of information are not shown, or whether it is not merely hearsay.

By MR. SEVERANCE:

Q. State the names of the corporations so acquiring ore reserves outside of the Steel Corporation.

MR. DICKINSON: So far as you know, Mr. Gayley.

By MR. SEVERANCE:

Q. So far as came to your knowledge.

A. Jones & Laughlin, Lackawanna Steel Company, and I believe the Inland Steel Company, and of course, in Cuba, the Pennsylvania and Bethlehem Steel Companies.

Q. How about the Cambria?

A. The Cambria always had large holdings on the Mesabi

Range, and on some of the old ranges. As to whether during that period they had accumulated more I cannot at this moment recall.

Q. You stated this morning in answer to counsel that from time to time after the organization of the Corporation in 1901 your suggestions or recommendations as to the acquisition of additional ore reserves were turned down by the finance committee of the Corporation.

MR. DICKINSON: You mean to say all his recommendations?

MR. SEVERANCE: No, certain of them.

THE WITNESS: In the majority of cases.

By MR. SEVERANCE:

Q. You are unable to give the names of the principal parties offering such lands?

A. I cannot recall those names.

Q. Would you recall Government subdivisions if I were to suggest them to you?

A. Government descriptions?

Q. Yes.

A. No, I would not be able to.

Q. Do you remember a tract offered by M. S. Standish, of New York, in Sections 5, 57-20, in 1901, containing nearly 5,000,000 tons, which was not taken, but was turned down?

A. I am not familiar with that; is that Vermillion?

Q. That would be 57-20.

A. Yes; I have a recollection of property that was offered by Standish and was not accepted. Was it on the Vermillion Range?

MR. DICKINSON: Does your answer cover all the details, or merely that there was such a property?

THE WITNESS: There was such a property.

MR. DICKINSON: The question involves much more than the name of the property, and I was just wanting to know if you answered all of that. What do you say as to that?

By MR. SEVERANCE:

Q. Was that Vermillion? I cannot remember now whether it was the Vermillion. I cannot remember these Government subdivisions.

A. I have forgotten whether it was Vermillion or Mesabi, but I remember Mr. Standish offering that property to us very well.

MR. DICKINSON: Does your answer embrace anything but the fact of Mr. Standish offering the property?

THE WITNESS: That is all.

MR. DICKINSON: And it did not cover the amount of ore?

THE WITNESS: No; it was simply that he bought the property; the amount of ore I do not know.

MR. SEVERANCE: I think, on reflection, that 57-20 is on the Mesabi.

THE WITNESS: I think so. I think Vermillion is up in the sixties.

By MR. SEVERANCE:

Q. Do you remember August Schupp offering the Grace Mine, in 33, 58-20, in 1901, and having the same turned down?

A. I do not recall that.

Q. Take some other years. Do you remember Mr. Congdon offering the Onondaga Mine in Section 4, 58-17, in 1904?

A. Mr. Congdon had offered us some property before he brought the Chemung properties to us.

Q. He offered you quite a number of different properties at different times, did he not?

A. Yes.

Q. Which were not accepted?

A. Which were not accepted.

Q. Do you remember Kinney & Hawkins offering you properties that you did not accept?

A. I remember that very well.

Q. Do you remember the Winifred Iron Company offering you properties that you did not accept?

A. Yes.

Q. And D. L. Fairchild?

A. I do not recall that.

Q. Do you remember R. B. Whiteside offering you properties in 36, 58-21?

A. I remember Whiteside.

Q. And that was turned down?

MR. DICKINSON: Wait a minute. Do you remember that particular piece of property, Mr. Gayley?

THE WITNESS: I remember a property coming to us from Whiteside.

MR. DICKINSON: But do you remember that particular piece that he described there?

MR. COLTON: There were several Whiteside properties, some of them taken.

THE WITNESS: I recollect that Whiteside offered us a property that was not taken.

MR. DICKINSON: That is what I understand. I am not trying to confuse you, Mr. Gayley, but I am simply trying to avoid having to go over all of these matters in detail afterwards. If you will just confine your answer to what you do remember, it will save all of us a good deal of trouble.

By MR. SEVERANCE:

Q. Do you remember a large tonnage being offered you by Warren & Langdon, which you declined to take?

A. No; I have fogotten about that.

Q. Do you remember a property being offered by Rood and others, of Hibbing, Minnesota, in 1903, in Section 8, 57-20, known as the Rood Mine?

A. No; I can not recall that.

Q. Do you remember the Morton Mine?

A. No.

Q. You do not recall the Morton Mine?

A. No.

Q. Do you recall properties offered by Gust Carlson, of Hibbing, containing nearly 5,000,000 tons, a large property, in 11, 57-21?

A. No, I can not say that I do.

Q. Do you remember a property offered in 1904 by C. T. Crandall, of Duluth?

A. No, I do not recall it.

Q. Do you remember properties offered by A. H. Bowden, of Duluth, and declined?

A. No, sir; I do not. A great many of these properties came to us simply with the government descriptions, without any names attached to them.

Q. Without stopping to go through a long list, you simply remember the facts, do you, as testified on direct examination, that a large number of properties were offered and the Corporation declined to take them?

A. That is a fact.

Q. You were asked this morning about Mr. Thomas F. Cole—or was it yesterday?

MR. DICKINSON: It was yesterday, I think.

By MR. SEVERANCE:

Q. He was the president of the Oliver Iron Mining Company, was he not?

A. He was made president just after the organization of the Steel Corporation.

Q. What was his attitude, as expressed to the officials of the Corporation, with reference to the acquisition of additional ore tonnages?

A. He stated that he considered——

MR. DICKINSON: I object to that as hearsay.

MR. SEVERANCE: I will state that I am offering this to show the advice received by the Corporation and the action they took upon such advice, as bearing upon the question of intent to monopolize, which is charged here. Go ahead, Mr. Gayley.

(By request, the stenographer repeated the last question and the unfinished answer thereto.)

MR. DICKINSON: I object on another ground. The question says "expressed to the officials of the Corporation." I think the question ought to be confined at least—although I still object to it as being incompetent—to what was said to him or in his hearing.

By MR. SEVERANCE:

Q. I will ask you to confine it to what was said in your hearing, Mr. Gayley, and thus meet my friend half way.

A. At a dinner at the Waldorf about 1905 or 1906, at which there were a great many, perhaps all of the presidents of the subsidiary companies, the officers of the Steel Corporation, and a great many of the finance committee, Mr. Cole

was asked if he had any word to say that would be of interest, and he stated to that assembly that he considered the Corporation were pursuing a suicidal policy on the Mesabi Range; that they were letting property after property of value slip by and not taking them, and that they had presented so many good properties——

Q. Whom do you mean by "they"?

A. The officials of the Oliver Mining Company had gotten data and negotiated conditions of lease on a great many valuable properties, and had forwarded them to New York, and the only information they got was that the finance committee had not approved of their recommendations. I was present at that meeting and heard Mr. Cole make this statement.

Mr. Dickinson: This is objected to on the ground that it is incompetent to show what the opinion of Mr. Cole was, and that it is incompetent to introduce here in evidence mere matters of conversation between officers and representatives of the United States Steel Corporation as expressing their views and being self-serving statements.

By Mr. Severance:

Q. What, if anything, did Mr. Cole say as to being tired of putting up propositions to have them turned down?

Mr. Dickinson: This is objected to on the same grounds.

The Witness: He stated, at this time, and he afterwards stated to me in my office, that this constant turning down of ore properties after he had negotiated the deal was placing him and his associates in a very humiliating position before the owners of ore property on the Mesabi Range.

By Mr. Severance:

Q. Mr. Gayley, there has been brought out upon the direct examination, and it was also touched upon a little on the cross examination, that you were recommending ore purchases or acquisitions far beyond the amount of reserves that were actually purchased. In making those recommendations I will ask you whether, as vice-president of the Steel Corporation, you were in any way actuated by a desire or intent to monopolize the available ore on the Mesabi Range.

MR. DICKINSON: This is objected to as incompetent and irrelevant.

THE WITNESS: The question of monopoly never entered my mind. It was my branch of the business to look particularly after the raw material end of the Corporation. My whole ambition in that direction and my whole desire was to see that the Corporation had an ample supply for a long period of manufacturing; a matter of supply that meant a just protection to it as a manufacturer.

By MR. SEVERANCE:

Q. You were in constant touch with the officials and finance committee of the Corporation when the acquisition of ore properties was under consideration, were you not?

A. I invariably made my recommendation to the executive committee when it was in existence, and later to the president or chairman of the board.

Q. And you heard, in connection with these offers, expressions right along as to the attitude of the different officials and finance committee and directors upon the subject of acquiring ore reserve, did you not?

M. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: Often.

By MR. SEVERANCE:

Q. You did?

A. Often.

Q. Did you, in any case, hear expressed by any of those gentlemen any desire to monopolize the ore supplies, or anything that suggested an intent on their part to monopolize the ore supplies available for the manufacture of steel?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: I never heard such a thought expressed or such a statement made by anyone in the Corporation during my whole connection with it.

By MR. SEVERANCE:

Q. You were asked by counsel whether or not, prior to 1901, it would not have been possible for manufacturers to

go upon the Mesabi Range and acquire additional ore supplies, or acquire ore supplies or reserves, and you stated that it would have been possible to do that. What was the fact after 1901?

A. There were still large quantities of ore available.

Q. That is, by answering counsel the other day to the effect that that could have been done up to April, 1901, you did not mean to testify that it could not equally well have been done after 1901?

A. It could have been done just as well after 1901.

Q. As a matter of fact, were large bodies of ore acquired by other manufacturers than the Corporation upon the Mesabi Range after 1901?

A. After the organization of the United States Steel Corporation in 1901 there ensued a period of greater activity than had ever before occurred in the acquisition of ore properties.

Q. On the Mesabi Range?

A. On the Mesabi Range.

Q. That is, there was more active competition in the market for ore properties than had before existed?

A. There was.

Q. And has that continued, or did it it continue up to the time you went out of active business?

A. Oh, no; because a great many of those properties were taken up, and there could not be the same activity. A great many of those properties that were available had been acquired by one or another interest—either by steel-making companies or independent furnace companies or ore-mining companies or manufacturers like Rogers, Brown & Company, and so on.

Q. But the activity kept up, although the number of mines available in the market was not as great. Is that true?

A. They—

Q. I will—

Mr. Dickinson: Let him answer.

Mr. Severance: I will restate the question.

By Mr. Severance:

Q. These various interests—steel manufacturers, pig iron manufacturers and ore merchants—were always up

there in the market looking out for additional mines, were they not, from the time the Corporation was organized to the time you retired from the vice-presidency?

A. They were just as anxious to get properties from the beginning of the Corporation until I left the Corporation; just as much at one time as another.

Q. And a large number of those properties were acquired by interests other than the Corporation, as you have stated?

A. Oh, yes; in fact, the bulk of the desirable properties were acquired within the first two years after the Corporation was formed by interests outside of the Corporation.

MR. DICKINSON: Do you mean to say that the bulk of the properties acquired after the organization of the United States Steel Corporation was acquired by concerns other than the Corporation?

THE WITNESS: I say that shortly after, or say, within two years after the Corporation was formed, the greater number of desirable properties were acquired by interests outside of the Corporation.

MR. DICKINSON: Does that apply to concerns other than those that were taken over by the Corporation later; for instance, like the Sharon? Or is that included in those outside?

THE WITNESS: No; I was not considering those. I referred to ore properties that went to users of ore that were not connected with steel works. Merchant furnaces were securing ore properties at that period.

By MR. SEVERANCE:

Q. What would you say as to whether or not there are available now, in different parts of the country, raw material supplies—ore and coke or coking coal—so that additional large steel plants could be established and secure their raw material in the same way that existing plants secured theirs?

MR. DICKINSON: This is objected to on the ground that it calls for a condition existing subsequent to the filing of the petition.

MR. SEVERANCE: I will change the date, then. I will make my question apply to October 25, 1911, the day before this suit was filed.

MR. DICKINSON: This is objected to on the ground that

Mr. Gayley has stated that his connection with mining interests and knowledge of them ceased some time prior to that date.

MR. SEVERANCE: I will withdraw the question and qualify him a little further.

By MR. SEVERANCE:

Q. When was it, Mr. Gayley, that you retired? The 1st of January, 1909?

A. Yes.

Q. Since that time have you kept in touch with the iron and steel business, particularly the raw material end of it?

A. In a general way, as to the developments, as a matter of interest.

Q. So there can not be any question, I will put my question back, then, to January 1, 1909. Up to that time I think counsel has very well qualified you to testify. State whether at that time there were additional supplies of raw material available—by "raw material" I mean coking coal and ore—so as to justify the investment of large sums of money in the establishment of large steel plants with an assurance that this raw material would be available for such industry in different parts of this country.

A. There were a great many locations and a great many sources of supply of raw material that could be used for that purpose.

Q. That could be economically so used?

A. Quite so.

Q. For instance, to take up different districts: Suppose that a steel plant was to have been located, at that time, January 1, 1909, on the Atlantic Seaboard. From what sources would it have naturally secured its ore and coke?

A. If you take the Atlantic Seaboard accessible to the coking coal districts of Pennsylvania and Virginia, you can get a variety of ores. Located near New York there are vast deposits in the Adirondacks that have never been touched. In fact, the Adirondack region has scarcely been scratched. There are large deposits of ore in Nova Scotia which can be brought in cheaply. There are larger deposits in Cuba than there are in the whole Lake Superior region, of iron ore, that can be cheaply brought into the United

States. Also ore is being brought in from Norway or Sweden to the Bethlehem Iron Company in large quantities, and to supply furnaces in the Schuylkill Valley, and quite a considerable tonnage likewise comes from Spain today.

Q. Did you ever investigate the ore deposits of Brazil?

A. During my connection with the Steel Corporation I twice sent mining engineers to investigate the deposits in the Minas Geraes district.

Q. What have you to say as to the ores of that region?

A. There are enormous quantities of ore.

Q. And what quality?

A. It is exceedingly rich ore. The only ore that can compare with the Brazilian ore is that extremely rich ore from the Minnesota mines on the Vermillion Range.

Q. What about the quantities available in Brazil?

A. In fact the quantity is so large that estimates seem to be astounding. Those engineers that we sent there estimate over a billion tons of ore, and probably would not be surprised, with further developments and explorations, to find an increase over that.

MR. DICKINSON: That is objected to as hearsay.

By MR. SEVERANCE:

Q. Have you read literature on the subject of these Brazilian mines also?

A. I have reports of men that were sent there, who were sent there directly.

MR. DICKINSON: I object to his speaking of the contents of reports; the reports would be the best evidence.

By MR. SEVERANCE:

Q. There has been a good deal published by other engineers in engineering journals?

A. There has been a great deal published, but I am relying in my answers on the opinions of, and results of examinations made by, my own experts.

MR. DICKINSON: Those are objected to as hearsay, and not within the knowledge of the witness, and as secondary evidence.

By Mr. Severance:

Q. Suppose it was desired to establish a new steel plant on the Great Lakes, or suppose it had been so desired on the first of January, 1909, when you went out of business, were there available ore supplies for such large plant?

A. I consider there were.

Q. Where?

A. On the Western Mesabi, in the developments of the Cuyuna Range, and likewise very considerable ore in the Baraboo district of Wisconsin.

Q. What about the Witherbee-Sherman ores in Northern New York?

A. They have a deposit of magnetic ore which yields on concentration the richest iron ore in the world.

Q. Is it a large deposit?

A. Enormous, and has scarcely been scratched.

Q. Have you ever considered the question as to whether that ore would be available for manufacturing along the Erie Canal, when its enlargement is completed a year or two hence?

A. The Lackawanna Steel Company, who are interested, expect to take their ore by the Erie Canal to Buffalo.

Q. From the Witherbee-Sherman properties?

A. Yes.

Q. In what other parts of the country are there available ores, where steel plants could be established, outside of the ones you have mentioned?

A. In the West and in the Southwest.

Q. Whereabouts in the Southwest?

A. In the West I have particular reference to Utah. In southern Utah there is a large deposit of ore, several hundred millions of tons. It has been estimated all the way from 300 to 500 millions of tons in Southern Utah. There is also available coking coal. This coal is not, however, the best adapted for coking, being high in volatile matter, but with a slight mixture of coal from the Wyoming District it would make a mixture admirably adapted for coking, and for smelting of iron ore. In fact, Utah is practically a self-contained iron-making center.

Q. When you are speaking of Wyoming coal you are speaking of the coal mines located in the State of Wyoming?

A. Yes.

Q. There are large coal deposits in Wyoming along the line of the Union Pacific?

A. Yes.

Q. And those are available for use?

A. Yes.

Q. Because they are located right along the line of the Railroad, are they not?

A. Yes.

Q. Do you know anything about any ore deposits along the Pacific coast, anywhere?

A. There are large deposits along the Pacific coast and likewise on the Gulf of Mexico. For instance, the western coast of lower California has large deposits of ore, which I had personally examined.

MR. DICKINSON: You mean you examined them personally, or had them examined?

THE WITNESS: Which I caused to be examined, and which are very rich and considered to be in large quantities by an expert who tested them, but which so far have not been considered available.

MR. DICKINSON: That is objected to as hearsay.

THE WITNESS: (Continuing) In Riverside County, California, there is a very large deposit of iron ore, which so far has not been available because there has been no way of getting coal cheaply to the Pacific coast.

By MR. SEVERANCE:

Q. Will you state whether, from your knowledge of the shipments of coal and coke, it would be feasible to take coke or coking coal from the east through the Panama Canal to the Pacific Coast and use it in the manufacture of pig iron in connection with the Riverside deposits?

A. Did you say coking coal?

Q. Or coke, I say.

A. You can transport either coal or coke by water, and it can be taken to the Pacific coast and utilized in the manufacturing of iron from the ores available on the Pacific Coast.

MR. DICKINSON: That is objected to, as it is a mere forecast of a condition that might exist after the issues were made

up in this case, and wholly separated in point of time from the activities of the United States Steel Corporation.

By Mr. Severance:

Q. Mr. Gayley, do you know anything about any ore in Texas?

A. Yes, there are large deposits of rich brown hematite ores in Texas, covering a large area of territory.

Q. Is there any coking coal within economical distance of those deposits?

A. I do not recall any, but it could be easily taken from Alabama there.

Q. I say, is there any within easy hauling distance?

A. Yes, it could be easily taken from Alabama there. I do not know any coal contiguous to that.

Q. That was not my question; my question was, was there any coal near enough so that it could be economically used with those ores?

A. Yes, there is a great deal of coal close enough for economical manufacture.

Q. You have to have limestone in addition to coal and coke?

A. Yes.

Q. Do you find that everywhere?

A. The Lord has put it everywhere.

Q. And if you can assemble the coal and coke there is no trouble about economically getting the limestone?

A. There never has been.

Q. In any of those regions?

A. In any district.

Q. Now, in view of the existence of all these large deposits, do you know of any commercial reasons why up to this time steel plants have not been located in those regions?

Mr. Dickinson: I object to that as asking for a mere opinion; he has not shown that he has ever organized or erected a steel plant or conducted any business of that sort.

Mr. Severance: The question is whether he knows.

Mr. Bolling: I think he will compare favorably with any of your experts—Nelson, for instance.

Mr. Dickinson: He is very good for what we called him for.

By Mr. Severance:

Q. (Continuing) And by "those regions" I mean Utah, California and Texas districts that have been testified about.

A. The consumption of steel in those districts is not great enough to justify going into the manufacture on any elaborate scale.

Q. But there is consumption there?

A. There is consumption which now is more economically supplied from the eastern and middle western steel works.

Q. And the southern?

A. And the southern.

Q. The Tennessee district?

A. Yes.

(Whereupon the hearing was adjourned until Monday, March 10, 1913, at 10:30 o'clock a. m.)

FORTY-EIGHTH DAY.

Empire Building,
71 Broadway, New York City,
Monday, March 10, 1913.

Before Special Examiner John Arthur Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the defendants, Mr. Severance, Mr. Bolling, Mr. Kellogg and Mr. Cuthell.

JAMES GAYLEY,

the witness under examination when the adjournment was taken, resumed the stand.

CROSS EXAMINATION (Continued.)

By Mr. Severance:

Q. Mr. Gayley, at the time of the adjournment you were testifying relative to various ore deposits in different places. Do you know of any ore deposits in Venezuela?

A. There are large deposits there, controlled largely by Sir William Van Horn.

Q. Are there iron ore deposits in Mexico?

A. Mexico is a country that has practically never been explored as to its iron ore, because operations there have been confined principally to the precious metals; but at various times, in talking with engineers—

Mr. Dickinson: I object to that as hearsay.

The Witness: (Continuing)—they advise that Mexico has enormous deposits of iron ore; that the ground has never even been scratched in investigation.

By Mr. Severance:

Q. You testified the other day, in answer to counsel for the Government, relative to the sources of ore supply now being availed of by different companies. Do you happen to

know where, if at any place, the Pennsylvania Steel Company secures its ore outside of that which comes from the Lake Superior district?

A. From Cuba.

Q. Have you had any investigation made of the Cuban ore bodies?

A. Not during my connection with the Steel Corporation.

Q. Are you familiar with them, from your knowledge of ores?

A. My familiarity with them comes from statements made to me by people who own property there.

MR. DICKINSON: That is objected to as hearsay.

By MR. SEVERANCE:

Q. You are familiar with the kinds of ore there?

A. Quite familiar.

Q. Do the ores in Cuba lie near enough to the sea so that they can be economically loaded upon vessels?

A. They are found very close to the seashore. Those on the south coast are close to the sea; and on the north coast the iron ores are, some of them, very close to the sea, and of course, naturally, extend back longer distances into the island.

Q. For how long a time has ore been imported into this country from Cuba?

A. I think for about twenty years.

Q. What is the character of the Cuban ore as to richness?

A. The ores on the south coast are, in their natural condition, rich like the coarser ores of the old ranges in the Lake Superior region. Those on the north shore, which are the fine ores, containing about, all told, forty per cent water, can, through the process of sintering, be converted into ore that will yield from 53 to 55 per cent iron.

Q. What process is that which you just mentioned? What is the nature of the process?

A. The ores on the north shore of Cuba or contiguous thereto are fine like flour, and very wet. The process of sintering converts this ore into larger masses, more solid masses, and at the same time drives off the moisture and makes it an anhydrous ore.

Q. Is the ore that is now being imported from Cuba of that character?

MR. DICKINSON: By "now" do you mean at the present time?

MR. SEVERANCE: Within the last three or four years; the ore that has been imported by the Pennsylvania Steel Company and the Bethlehem Company; has that been of that character, or is it the other from the south coast of Cuba?

THE WITNESS: The Bethlehem Steel Company are bringing in the coarser ores. The Pennsylvania Steel Company brings in both the coarser ores from the south side of the island and the fine ores from the north side of the island. Some of this ore is sintered in Cuba, and a portion of it is brought in and used in the raw state.

By MR. SEVERANCE:

Q. You stated, in answer to counsel the other day, that you had made some statement to Mr. Frick relative to the Tennessee Coal & Iron Company, somewhere from six months to a year previous to the time the Tennessee Coal & Iron Company was acquired by the United States Steel Corporation. Was that communication to Mr. Frick in writing?

A. Oh, no.

Q. It was oral, was it?

A. It was oral.

Q. Where were you when you made this statement to Mr. Frick? And please state the circumstances, and what was said.

A. I casually met him in the corridor of this building, 71 Broadway. We chatted a while on various topics. He inquired about some things in relation to iron ores, and I incidentally remarked that I had heard the report of the investigating committee that had been looking into the raw material resources of the Tennessee Coal & Iron Company and told him of the quantities of iron ore that the report estimated that they held.

Q. May I interrupt you for just a moment? What was the source of your information about this committee?

A. I derived my information from one of the directors of the Tennessee Coal & Iron Company.

Q. Under what circumstances?

A. We were lunching or dining together, and he told me of the report that had just come in, and gave me the figures of the report.

Q. Who was the director?

A. Mr. Frank S. Witherbee, of Witherbee, Sherman & Company.

Q. Was that communicated to you, so far as you know from anything said by Mr. Witherbee or otherwise with any idea of any action being taken by you as an officer of the Steel Corporation?

A. Oh, no. It was just a matter in which he knew I would be interested, as desiring to acquaint myself with ore reserves all over the world, in the same manner that he had told me the results of his investigation into Sweden, after a trip that he made there.

Q. This communication to you by Mr. Witherbee was not with a view to interesting you as a purchaser, or anything of that kind?

A. That was never thought of.

Q. Or interesting the Steel Corporation as a purchaser?

A. No, no.

Q. What committee was this that Mr. Witherbee spoke about?

A. Mr. Perin and Mr. Kennedy, I think, and another.

MR. DICKINSON: Will you give the initials of these gentlemen, while you are giving their names?

By MR. SEVERANCE:

Q. If you know them.

A. I think it was C. Perin; I am not sure: and then Mr. Julian Kennedy. I do not know who the third member of the committee was, at the present time.

Q. Did Mr. Witherbee state to you why this investigation had been made by this committee?

A. At that time they were figuring on amalgamation with some Southern companies; and it not only included the ore reserves of the Tennessee Coal & Iron Company, but of some of the other companies in the South.

Q. Was the United States Steel Corporation or any of its subsidiaries interested in that proposed amalgamation?

A. Not at all.

Q. Then this was merely a statement made to you in the course of a lunch or dinner where you happened to be at the table with Mr. Witherbee?

A. Precisely.

Q. Now you say that you mentioned this matter to Mr. Frick?

A. Yes.

Q. What was the conversation between you and Mr. Frick on the subject?

A. In the course of our conversation I casually mentioned to him what I had heard about the Tennessee Coal & Iron reserves, and that it would be a good thing if the Steel Corporation had these large raw material reserves.

Q. What did Mr. Frick say?

A. Mr. Frick said that he did not favor it. He said that the property could not be gotten at any price at which he would consider it wise to make an investment, and he did not believe it could ever be purchased at a price which in his judgment would justify the Corporation in ever owning it.

Q. How long a conversation was that with Mr. Frick?

A. Not over five minutes.

Q. Now from that time that you had that little conversation of five minutes with Mr. Frick up to about the time of the purchase, within a day or two, or two or three days, of the time when the stock of the Tennessee Coal & Iron Company was purchased by the United States Steel Corporation, did you have a conversation with any other member of the board of directors or of the finance committee, or any official of the Corporation with reference to that matter, so far as you can recall?

A. About what time?

Q. Up to about the time of the purchase, when the purchase was under negotiation.

A. The only official that I can recall ever having mentioned the matter to was when Judge Gary asked me about that time——

Q. About what time?

A. While the negotiations were on, during that financial disturbance.

Mr. Dickinson: I object to what passed between him and Judge Gary as incompetent and irrelevant. I also object further because the time is not specified.

Mr. Severance: I will put one or two questions to clear that up.

By Mr. Severance:

Q. Mr. Gayley, did you have personally anything to do with conducting the negotiations for the purchase of the Tennessee Coal & Iron Company's stock?

A. Nothing whatever.

Q. You were advised of the fact, as an official of the Corporation, were you not, that the negotiations were on?

A. Yes.

Q. That was during the financial panic of 1907, was it not?

A. It was.

Q. From the time that you first learned of those negotiations being on, how long a time elapsed before you were advised that the purchase had been made?

A. It occurred very quickly.

Q. It was within a few days?

A. Within a few days, yes.

Q. And right in the midst of the panic?

A. Right in the midst of it.

Q. From the time that you had this five-minute talk with Mr. Frick up to the time that Judge Gary spoke to you with reference to the matter, while these negotiations were going on in this short period that you speak of, had you had any talk with anybody about the subject?

A. No, not with anybody.

Q. Had you had any investigation made to ascertain the authenticity of what Mr. Witherbee had told you?

A. Not at all.

Q. You paid no attention to it?

A. Not at all. Knowing the character of the men on that committee, I accepted Mr. Witherbee's statement of their finding as accurate.

Q. After what Mr. Frick had said to you, you did not pursue the matter any further with any official?

A. Not at all.

Q. With any of them?

A. I felt——

MR. DICKINSON: I object to what he felt.

THE WITNESS: I concluded——

MR. DICKINSON: I object to what he concluded.

THE WITNESS: I concluded from Mr. Frick's statement that the matter was dismissed from his mind entirely.

MR. DICKINSON: I object to his stating his conclusions from what Mr. Frick said, as incompetent and especially his conclusions without showing what he said.

By MR. SEVERANCE:

Q. You have already stated what Mr. Frick said, have you not, in substance, so far as you can remember?

A. He stated it did not interest him at all.

Q. Now at the time these negotiations were on, you say Judge Gary spoke to you about the matter?

A. He did.

Q. What did he say to you, and what did you say to him?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: I gave him the report, or the substance of the report, made by this investigating committee.

By MR. SEVERANCE:

Q. Did you do that in response to a request from him or an inquiry from him?

A. He asked me what I felt could be relied upon as to the raw material reserves of the Tennessee Coal & Iron.

Q. And you told him what you had learned about that report?

A. I did.

MR. DICKINSON: I understood him to say that he gave him the report.

THE WITNESS: I never had any report.

MR. DICKINSON: Read what he said. I thought he said that he gave him a report.

(The answer referred to was repeated by the stenographer as follows:)

"I gave him the report, or the substance of the report, made by this investigating committee."

By MR. SEVERANCE:

Q. So that there will be no misunderstanding about what you did, did you have a copy of the report that Mr. Perin and others had made?

A. I did not; I had the substance of the report as communicated verbally to me by Mr. Witherbee.

Q. Months before?

A. Months before.

Q. Have you detailed, as fully as you can now recall, the conversation with Mr. Frick, concerning which you were interrogated the other day by counsel, and any other conversation that you had with any official of the Corporation on the subject?

A. I have given you practically in detail my conversation with Mr. Frick. It was very brief,—casual remarks.

Q. And with Judge Gary also?

A. Judge Gary, at the time of my interview with him, said——

MR. DICKINSON: I object to his stating what Judge Gary said, as irrelevant and incompetent.

THE WITNESS: He was very much disturbed by the financial situation, and said that it might be found necessary for the Corporation to take over the Tennessee Coal & Iron in order to relieve the situation.

By MR. SEVERANCE:

Q. And it was in connection with that remark that he made this inquiry of you?

A. Yes, just after he made this inquiry.

Q. So far as you know, had the United States Steel Corporation made any investigation previous to this time, the

time of this panic that you speak of, as to the works down there or the character of the mills or furnaces?

A. No, it had made none.

MR. DICKINSON: The question was "so far as you know." Are you answering so far as you know, or are you answering positively that they had made none?

THE WITNESS: They had officially made no investigation. What I mean by that is that there might have been some officer of a subsidiary company who had gone down there on a visit on his own account, but there was no official investigation made.

By MR. SEVERANCE:

Q. That is a mere speculation or guess; you do not know that, do you?

A. I do not know that. They were always visiting the works all over the country all the time; it was the customary thing to do; but there was no official investigation authorized or made by the Steel Corporation or any of its subsidiary companies, so far as I know, because they were not interested in it.

Q. Do you know whether the Steel Corporation officials had ever looked upon the Tennessee Coal & Iron Company as being a substantial competitor?

MR. DICKINSON: I object to that as being general, not calling for the name of the officer, or any particular circumstance.

By MR. SEVERANCE:

Q. (Continuing.) So far as you know?

A. So far as I know the Steel Corporation never regarded the Tennessee Coal & Iron Company as a substantial competitor.

Q. I asked you some questions Friday with reference to the advisability of a large steel manufacturing company having a large supply of ore, and a variety of ores, and you answered in substance that you regarded it as a necessity. What is the fact as to whether the possession of a variety of ores enables the manufacturer to utilize lower grade ores than would otherwise be economically used?

A. Will you read the last part of that?

(The question was repeated by the stenographer.)

By Mr. Severance:

Q. (Continuing.) I mean through mixing.

A. There is no doubt that a manufacturing concern, by reason of large holdings of ores of different varieties, may, through the chemical composition of those ores, utilize some that are not so good, in other words higher in phosphorus in some mixtures, by reason of lower phosphorus in other mixtures than they would be able to do if they were limited only to a few mines.

Q. That makes possible the use of ores that otherwise would remain in the ground untouched, does it not?

A. For the time being, yes.

Q. And it conserves the higher grade ores to that extent?

A. It does.

Q. Do you recall the acquisition of the Hill ores, so-called?

A. Yes.

Q. And the Hill lease?

A. Yes.

Q. Did you favor the acquisition of those ores?

A. I did.

Q. At the time the Hill lease was negotiated what was your opinion as to the quantity of the ore embraced in that lease?

A. The estimate forwarded to me by officials of the Oliver Mining Company was 150,000,000 tons.

Q. You are speaking in round figures, are you?

A. Approximately that.

Q. How much ore did the Hill people claim or say was in the property at that time, if you know?

Mr. Dickinson: I object to this as being too general and indefinite, not stating who claimed it, when they claimed it, and now they claimed it, whether verbally or through written representations. I do not object to the evidence.

Mr. Severance: I withdraw the question.

By Mr. Severance:

Q. You say your information was that it was about 150,000,000 tons?

A. Yes.

Q. Some reference has been made in the testimony in this case to the fact that the royalty provided for by the Hill lease increased from year to year so that it would become a very high royalty after the lapse of twenty or thirty or forty years. What was your view as to that matter, as to the amount of royalty paid under the Hill lease, and how did that view influence you in making up your conclusion that it was wise to negotiate that lease?

A. It was a high rate of royalty, but I regarded the situation from this viewpoint: Assuming the estimate of the Oliver Mining Company of 150,000,000 tons as correct, I felt certain that by vigorous mining operations the ore would be exhausted on that basis before we reached very far into the higher royalties; but what influenced me more, perhaps, than anything else, were two things; first, while the royalty was high and increased every year, yet the amount of that royalty spread over the other holdings of the Steel Corporation only made the average increase in royalty a few cents a ton; and, in the second place, the desirability of adding to the Steel Corporation's reserves by at least 150,000,000 tons was worth the expenditure of that two or three cents increase in average royalty.

Q. Did it afterwards develop that there was more ore than you estimated at that time?

A. I understand that they have increased that about 100,000,000 tons.

Q. Has that increase been more or less discovered since you left the Corporation?

A. Yes, since I left the Corporation that has been determined.

Q. What was done after the acquisition of these Hill ores, with reference to a washing plant to utilize them?

A. The Oliver Mining Company experimented for a year or two with various types of washing plants, to determine the best and most efficient manner in which the sandy ores in that section of the country, a large tonnage of which was embraced in the Hill lease, could be worked in an efficient way. Then subsequently they constructed a washing plant, as the result of those experiments, on a large scale.

Q. Counsel desires to ask you as to the date the washing plant was built. Do you remember that?

A. I am not quite sure, but I think the final or present washing plant was built about three years ago, as near as I can remember.

Q. Did the Steel Corporation have ores of its own in the region of the Hill ores, of similar character, that required washing?

A. Yes, they had.

Q. They had a half interest in the fee, had they not, of some of the Hill ore lands?

A. They had.

Q. So that this plant was a necessity both for the utilization of the Hill ores and ores that the Corporation itself owned, outside of the Hill lease?

A. Yes; it was.

Q. What did it cost, the plant, about?

A. Oh, a million and a half.

Q. Now, the result of the construction of that plant was to render it possible to use ores that otherwise could not have been economically used, was it not?

A. That was the purpose.

Q. These ores could not have been utilized, without a process of that kind, economically, could they?

A. They could not. They were too lean and too silicious to transport to lower lake ports.

Q. You said that the Steel Corporation conducted a series of experiments before the final washing plant was built. Had washing plants been used in other sections of the country previous to this time?

A. Oh, yes; in a great many sections of the country; but each different mineral deposit requires ordinarily a different method of treatment, and the experimental plant was for the purpose of determining which kind of installation would best treat the lean western Mesabi ores.

Q. Are there large tonnages of those ores?

A. There are on the western Mesabi.

Q. That is what I mean.

A. Yes, sir.

Q. Outside of the Hill ores?

A. Outside of the Hill ores.

Q. Do you know whether any other mining corporation than the Oliver Iron Mining Company is utilizing those ores by the use of a similar plant?

MR. DICKINSON: When do you put that time?

MR. SEVERANCE: Any time up to the present.

MR. DICKINSON: I object to anything transpiring after the bringing of this suit.

MR. SEVERANCE: I am not speaking of any plant built by any defendant in this case; I mean built by anybody outside of the Corporation.

MR. DICKINSON: I object to the proving of any status there after the filing of the suit.

MR. SEVERANCE: All right. Answer the question.

THE WITNESS: A mining company in the western Mesabi has already put in, or just recently completed, an installation on a similar scale, a washing plant copied after the Steel Corporation's plant. Prior to that a firm undertook to treat its ores, but found that it was going to lead into so much money and the operation was so extended, that they abandoned it.

By MR. SEVERANCE:

Q. What firm was that?

A. W. P. Snyder & Company of Pittsburgh.

Q. Is this matter of the construction and operation of a washing plant of that character something that can not be done except by a concern of large capital?

A. It requires large capital to undertake that kind of an operation, for two reasons: In the first place, there is a lot of experimental work that has got to be done. Part of it may be utilized, and a large part of that expenditure may be wasted. Of course, it is valuable in one sense, in knowing what you can not do as well as what you can do. A large part of the experimental work in any proposition, however, involves the expenditure of money that can not be recovered. Then again, to treat a low grade ore surrounded by richer ore means that the installation and the operations must be conducted on an extensive scale, in order that the cost of the finished product may compare favorably with the actual

product from the mines; and it requires a large expenditure of capital to work out a proposition on that basis.

MR. DICKINSON: Mr. Severance, will you ask Mr. Gayley to explan what he means by comparing favorably, in that connection?

MR. SEVERANCE: I am just going to do that.

By MR. SEVERANCE:

Q. You mean, by "comparing favorably"——

MR. DICKINSON: Will you not ask him what he does mean?

MR. SEVERANCE: Let me finish the question, first. Then you may object.

By MR. SEVERANCE:

Q. You mean by that that the expense of washing must be spread over such a large volume that the cost per ton will be very small, and thereby enable you to produce ores in that way at only a slightly higher cost than if mined and used in the natural state?

A. That was the idea; that the product from these operations shall be so great that it will be a large divisor into the cost of operating. Then again, the concentration of those ores increases the percentage of iron by a few per cent, which, with the large operation, brings the value and cost to a point where it will compare favorably with the mining of the natural rich ores.

Q. Judge Dickinson wanted me to ask you what you meant by that expression "compare favorably."

You mean that it will leave them on an even keel?

A. I mean it has to be done on such an extensive basis that the large tonnage, coupled with the increased richness of the ore, will be very close to the mining of the naturally rich ores in the manner in which the naturally rich ores are mined.

Q. That is plain enough.

You were speaking about the experiments that are necessary preceding the installation of such a plant. Does the Steel Corporation maintain a department for that purpose of conducting experiments in various lines of production and manufacture?

A. They have a department of investigation of economical methods of manufacturing, in their office at 71 Broadway. And in Pittsburgh they have a research laboratory which is constantly investigating various things in regard to the manufacture of iron and steel.

Q. When was that established? Was it established during your connection with the Corporation?

A. Just about the time I left, as I recollect. It had been under consideration for a year or two previous—I mean the Pittsburgh Bureau of Research. I do not think the appropriation was made, however, until about the time I left, or after I left the Corporation.

MR. DICKINSON: It was in 1899, was it not?

MR. SEVERANCE: 1909.

By MR. SEVERANCE:

Q. There is one thing I neglected in passing. What is the character of the ore deposits in the Tennessee field? Is it high grade ore or low grade ore?

A. Low grade ore; about 37 per cent iron.

Q. You testified the other day, Friday, that coke could be transported by water.

A. It can.

Q. Did you ever know it to be done?

A. I have.

Q. When?

A. I was connected with an iron works in St. Louis in 1880 to 1882, and just below our works was the large Vulcan Steel Works, and all the coke coming to the St. Louis district for blast furnace use was transported in barges from the Pittsburgh district.

Q. You were examined by counsel the other day with reference to certain minutes of the Carnegie Steel Company during the year 1900, where entries were found relative to the enlargement or extensions of the activities of that company in the way of the manufacture of wire and tubes and nails, I think.

MR. DICKINSON: Will you specify the minutes to which you refer, so that I will know just what they are?

MR. SEVERANCE: You called his attention to various min-

utes. I have not got them on my notes. You remember them, however, undoubtedly.

MR. DICKINSON: I thought you were going to ask him about them specifically.

By MR. SEVERANCE:

Q. You stated, as I recall, that that matter was under discussion, but was, for the time being, abandoned during the autumn of that year?

A. It was abandoned in the autumn of that year.

Q. Was it a new thing for the Carnegie Company to take up for consideration the enlargement of its line of products?

A. It was the usual thing.

Q. And for how many years had they been doing that?

A. Ever since they got into the business.

Q. At least during the entire period that you were connected with them?

A. All the time that I was connected with them they were constantly expanding.

Q. Not only expanding in tonnage, but in the diversity of their product?

A. In the diversity of products, and the utilization of their products.

Q. Explain a little more fully what you mean by that—"the utilization of their products."

A. When they substituted soft steel for puddled iron, they sent representatives throughout the country, even into blacksmith shops, to show them how to use steel in the place of puddled iron. They built the first steel car that was ever made, and they put it on their Bessemer Railroad and demonstrated the efficiency of the steel car and created that great industry.

Q. Was the Carnegie Steel Company a manufacturer of steel cars?

A. No, they were not.

Q. In what way did they benefit, then, by the installation of a steel car on the Bessemer Road?

A. By building up and creating a new use and a new demand for steel.

Q. And did they furnish the steel to the manufacturers of steel cars?

A. They furnished a great deal of steel for that purpose, and have ever since the steel car has been developed furnished large quantities of steel used in steel car construction.

Q. Do they furnish the steel to the Pressed Steel Car Company?

A. They do; all they can.

Q. They did during your connection with the Corporation, did they not?

A. They did.

Q. I do not mean all of it, but a part of it—all they could sell to them?

A. They did. They always did. They supplied the Pressed Steel Car Company with all the steel that they were able to. I mean by that that the Pressed Steel Car Company's demand was often beyond what the Carnegie Steel Company could supply.

Q. In what other lines do you remember had the Carnegie Steel Company enlarged its scope of activity during your connection with it?

A. In steel buildings.

Q. Explain a little more fully.

A. Steel frame buildings, like those going up here in New York all the time.

Q. When you first went with the Carnegie Steel Company were they not manufacturing structural steel?

A. Yes, they were manufacturing structural steel for bridges.

Q. For bridges?

A. Yes.

Q. Do you recall any other instances where they enlarged the scope of their activity?

A. In the case of steel ties on railroads. A good part of the Bessemer Railroad and some of the railroads in the Northwest are equipped with steel ties. They are new in this country. They have been used for a long time in India in a different way, but that was the first substantial introduction of steel ties into this country, when they were placed by them on the Bessemer Road.

Q. Your attention was called the other day, Mr. Gayley,

by counsel for the Government, to a minute showing the purchase of plate mills at Bethlehem?

A. Yes.

Q. Why were they bought?

A. Because the Bethlehem Steel Company were not using their plate mills, and, with the development of the steel car industry Mr. Schwab thought that he saw a wider field than the Carnegie Company had had previously for plates. The Bethlehem mills were idle; the president of the company was willing to sell at a cheap price, and Mr. Schwab purchased them for the Carnegie Steel Company.

Q. And they were installed where?

A. At Homestead.

Q. And put in use?

A. Certainly.

Q. Do you remember any other new uses for steel which were brought in by the Carnegie Steel Company during your connection with it, before the organization of the corporation?

A. I have given the large sources which they worked up. Of course in minor lines they were always aiming to create a new field of usage for steel. I might add that the Carnegie Steel Company, up until the formation of the Corporation, were not manufacturers in detail of steel products. They confined themselves almost entirely to the business that produced large tonnages.

Q. That is, they did not manufacture small things,—light material?

A. No. Until the formation of the United States Steel Corporation they had not gone into such things as nails and horseshoes and items of that class.

Q. They manufactured the heavy tonnages?

A. They manufactured the heavy tonnages—plates, beams, rails and things like that.

Q. You stated the other day, in answer to counsel, that the Illinois Steel Company and the Carnegie Company were competitors. What is the fact as to whether the Carnegie Company, previous to the organization of the Corporation, was engaged to a greater or less extent in the foreign trade?

A. The Carnegie Steel Company's interest in the foreign

trade generally occurred during depression of business in the United States. Then, in dull times, when they had not a demand for the product of their mills in this country, they kept their mills going by export business so far as possible.

Q. And that export business continued more or less all the time, did it not, but to a greater extent in those dull times of which you have spoken?

A. To an increasing extent, because it was found that the former policy of simply going abroad spasmodically and selling steel would not hold the trade, and that if they were going to maintain their position as exporters of steel, it was necessary to be in the market, even if only to a limited extent, all the time.

Q. After the organization of the Steel Corporation, and during your connection with the Corporation, there was an export department created, was there not?

A. There was.

Q. And the Corporation went largely into the export business?

A. Very largely.

Q. And continuously?

A. And continuously, yes.

Q. Did the Illinois Steel Company participate in the foreign business?

A. They did not.

MR. DICKINSON: I object to that, the sources of the information of the witness not being shown, nor that he has any knowledge on the subject.

MR. SEVERANCE: You did not show that he knew they were competitors in domestic business, but you asked him the question, and got an answer.

MR. COLTON: He volunteered that.

MR. DICKINSON: If you want to show that he did not know, you have an opportunity of doing it by cross examination.

MR. SEVERANCE: Thank you.

MR. DICKINSON: That is one province of cross examination. If the witness has testified to something that you think he did not know, you can go ahead and show that fact. We thought he knew who his competitors were in the field in

which they were carrying on business. If you doubt it, you can develop his ignorance on that subject.

MR. SEVERANCE: Will you not please let me show that there were some fields in which they were not competitors, or will you not allow that, Judge?

MR. DICKINSON: Yes. If he knows.

MR. SEVERANCE: He probably knows one as well as the other.

MR. DICKINSON: We did not ask him about foreign competition. That is original matter that you are bringing out.

MR. SEVERANCE: Can I not ask him about anything that you did not ask him about?

MR. DICKINSON: I think you will, undoubtedly. I object to it, of course.

MR. SEVERANCE: I think I will.

MR. DICKINSON: I have never known of anything you would not ask.

By MR. SEVERANCE:

Q. Was the Illinois Steel Company a competitor of the Carnegie Company in the eastern part of the United States,—from Pittsburgh east?

A. No. The advantages were all, naturally, in favor of the works that were located right in the territory.

Q. During your connection with the Carnegie Steel Company, previous to the organization of the Corporation, what was its practice as to building over old plants, or building new plants?

A. It built new plants.

MR. DICKINSON: This is excepted to as not cross examination, and bringing out a matter that was not developed on direct examination.

MR. SEVERANCE: I will state that this is directly cross examination, in view of the examination of counsel into the matter of going into new branches of manufacture in 1900.

MR. DICKINSON: Do you think that going into new branches of manufacture in 1900 is the same as rebuilding old plants?

MR. SEVERANCE: I think so. They built new plants and went into new branches.

(By request, the stenographer repeated the pending question, as follows:)

"Q. During your connection with the Carnegie Steel Company, previous to the organization of the Corporation, what was its practice as to building over old plants, or building new plants?"

THE WITNESS: They were constantly expanding in their construction to increase their capacity; and they tore down old plants and built new ones.

By MR. SEVERANCE:

Q. Was the matter of building tube works and nail works first discussed by the Carnegie Steel Company in 1900, or had that been under discussion before that time?

A. Oh, I think in 1899 the discussion first began, to determine in what avenue the company should expand to produce and market more steel.

Q. When were open hearth furnaces first installed at Homestead?

A. I think it was in 1886 that they had the first furnace.

Q. From that time on was the installation of open hearth furnaces in process up to the time you left the corporation?

A. How is that?

Q. From 1886 on was it practically a continuous process in the installation of open hearth furnaces, up to the time you left the Corporation?

A. Oh, yes. It was impossible to expand any further along the lines of Bessemer steel.

Q. Why was it?

A. Because the ore reserves in the Lake Superior District would not provide the kind of ores necessary for making Bessemer steel. Basic open hearth was the only process that was open.

Q. There are Bessemer plants still in operation, are there not?

A. Oh, yes; but those that are in operation are working on the ore supply that had been provided a long time ago. New extensions, however, could not be made with a certainty of calling on and securing a supply of the Bessemer grade of ores.

Q. Was there some discussion as to the comparative merits of open hearth and Bessemer steel in the manufacture of steel rails?

A. There always has been a discussion.

Q. Has that matter ever been definitely settled one way or the other?

A. I do not know of its having been definitely settled up to the time I left the Corporation.

Q. That is, there were some people who advocated one and some another?

A. Yes. It takes a long time to develop the efficiency of rails of different manufactures.

Q. By "a long time" what do you mean?

A. I should say it would take perhaps a period of ten years to fully determine, under all conditions of traffic and wear and use.

Q. Was there a diversity of opinion among both steel manufacturers and railroad men?

A. There always has been.

Q. That is, neither one were united on one or the other?

A. No.

Q. Neither the steel men nor the railroad men?

A. No.

Q. Your attention was called the other day to some minutes purporting to show that you had had some interviews with members of what was called the Ore Association at Cleveland, relative to limiting the amount of ore which should be brought down the Lakes. Do you remember your attention being called to that by counsel the other day?

A. Yes. In 1900, I think it was.

Q. Were there ever any negotiations of that character of any sort after the organization of the Steel Corporation?

A. Towards limiting the supply?

Q. Yes, limiting the bringing down of ore?

A. I never knew of any.

Q. Your attention was called the other day by counsel to what purported to be a suggestion by you that 200,000 tons of non-Bessemer ore be sold, apparently for the purpose of enabling the Carnegie Company to acquire further non-Bessemer mines at a cheaper price. Do you remember that being called to your attention by counsel?

A. I think it was.

Q. Was any ore ever sold under that resolution, so far as you know?

A. We did not sell any ore.

Q. You did not?

A. No, we only threatened to.

Q. And you never really acted under that resolution?

A. No.

Q. You were examined both by counsel for the Government and by myself with reference to the acquisition of further ore supplies by the Corporation, and you stated that the majority of the properties offered were turned down. You stated that in answer to my question. Were those properties that were turned down only low grade ore bodies, or were there high grade ore bodies?

MR. DICKINSON: Objected to as being incompetent and general and not showing what the names of the properties were, and the time and the people who offered them.

THE WITNESS: The greatest proportion were all good average Mesabi ores. There was a small portion of them, and a very small proportion, that were sandy mixed ores, such as are in the western Mesabi, and came under the Hill lease. For instance, the Arcturus Mine, which was turned down by the Corporation; and then subsequently the lease was secured.

MR. DICKINSON: Secured by the Corporation?

THE WITNESS: Secured by the Corporation.

By MR. SEVERANCE:

Q. From whom?

A. From the owners, I suppose. The Corporation first turned it down, and then some of their officers on the Mesabi Range thought that if the Corporation did not appreciate ore reserves they would take it, and they took it themselves. After they took it the Corporation thought better of it and persuaded them to turn it over to them.

Q. That was after a time that they got tired of having everything turned down, as you testified the other day?

A. That was a time when the Duluth officials got tired of having everything turned down.

Q. And that is the only instance you recall, is it, of those

properties that the Corporation refused to take when presented, of low grade character?

A. That is the only one I can recall.

Q. You were asked questions with reference to the Union-Sharon property. You became familiar, did you, with the ore reserves of the Union-Sharon?

A. Yes, sir.

MR. DICKINSON: You mean before the Corporation acquired them or after that?

MR. SEVERANCE: Was it before the Corporation acquired the property?

THE WITNESS: Yes. I knew in a general way about them.

By MR. SEVERANCE:

Q. Do you know how the negotiations for the acquisition of the Union-Sharon property by the Corporation were initiated?

MR. DICKINSON: I object to that unless he shows that he took part in the negotiations. Whatever he knows by hearsay we object to as incompetent.

THE WITNESS: Yes.

By MR. SEVERANCE:

Q. State the facts with reference to the matter, as far as they came under your personal observation or within your knowledge.

MR. DICKINSON: He is not to answer as to hearsay?

MR. SEVERANCE: No, I am not asking as to hearsay.

THE WITNESS: I was called at my residence one morning on the 'phone by Judge Reed of Pittsburgh, who asked me to come down to the Union League Club before going down town.

By MR. SEVERANCE:

Q. Here in New York?

A. Here in New York.

MR. DICKINSON: We object to anything that passed between officers or directors of the Corporation, as incompetent.

THE WITNESS: (Continuing): I went to the Union League Club, and he said Mr. Frick wished to see me. Mr. Frick then proposed——

MR. DICKINSON: We object to what Mr. Frick proposed as being a communication between directors and officers of the United States Steel Corporation.

MR. SEVERANCE: I call attention to the fact that your witness, Mr. Donner, has stated that Mr. Frick was their associate in the Union-Sharon, and that Mr. Frick took up with the Steel Corporation the negotiations for the sale of the Union-Sharon to the Corporation, and took it up on their behalf. I want to find out whether that is true.

MR. DICKINSON: I object to counsel informing the witness under cross examination what had been previously testified to by another witness in this cause, as an improper communication to the witness.

MR. SEVERANCE: How would that compare with the reading of minutes on direct examination?

MR. DICKINSON: They were minutes of meetings at which he was present.

THE WITNESS: (Continuing) Mr. Frick then proposed that the Union-Sharon Company should be disposed of to the Steel Corporation, and spoke of the basis on which the fee owners would be willing to let them pass out of their possession.

By MR. SEVERANCE:

Q. Whom was Mr. Frick representing in that transaction?

A. I understood he was representing both the companies.

Q. The Union and the Sharon?

A. The Union and the Sharon, jointly.

MR. DICKINSON: Ask him whether he understood Mr. Frick was interested in both companies, the Union and the Sharon.

By MR. SEVERANCE:

Q. Did you understand that he was interested in the Union-Sharon Company?

A. I understood he was interested in the Union.

Q. Did it come to your knowledge at that time, or did you know that they were in process of merging the two companies, the Union and the Sharon?

A. At the moment I do not recall.

Q. How long a conversation did you have with Mr. Frick concerning this matter?

A. Probably fifteen minutes.

Q. And did you take it up with any of the other officials of the Corporation, at his request?

A. I came down town and reported it to Mr. Perkins, chairman of the finance committee, and Judge Gary.

Q. Was that the commencement of the negotiations for that acquisition by the Corporation?

A. That was the beginning.

Q. What was the next step in that matter?

A. I cannot recall the next step, but I do know that a short time afterwards there was a meeting in Pittsburgh of the presidents of the subsidiary companies of the Steel Corporation and various members of the Finance Committee.

MR. DICKINSON: Were you present there?

THE WITNESS: I was present.

MR. DICKINSON: We object to it as irrelevant and incompetent.

THE WITNESS (Continuing): We visited the Union Works and likewise the Sharon works, and had a meeting with Mr. Donner and one or two members of the finance committee, at which I was present, regarding the tonnages of ore they had in the Lake Superior District.

MR. SEVERANCE: I will ask a question right here, if I may.

By MR. SEVERANCE:

Q. Was there any difference of opinion between the Union-Sharon people and yourselves as to the value or the extent of the ore tonnages, during these negotiations?

MR DICKINSON: Objected to as irrelevant and incompetent.

THE WITNESS: They claimed more ore in reserve than our engineers were willing to allow—in this way; in explorations on the Mesabi Range the Oliver Mining Company, and I think a good many independent engineers, estimate that a boundary line fifty feet beyond the outside drill holes is a fair extension of the ore deposit. Mr. Donner in his estimate had

taken 100 feet, which represents materially more ore; and that was objected to because it was problematical whether the ore would extend that far.

By Mr. Severance:

Q. Was there or was there not a reduction in the proposed purchase price on account of this objection as to the amount of ore reserve?

A. I think there was. My memory is not so clear on that now, but I do know that we did not admit the quantity of iron ore which they had estimated.

Q. Did you ascertain whether or not the Union-Sharon had a large ore supply?

A. They had a large ore supply, of very good ore.

Q. Did you favor the acquisition of the Union-Sharon?

A. I did. I favored anything that brought more ore into the Corporation, because I thought they were short,—had a short supply.

Q. You favored the acquisition of that property on that ground?

A. Yes, on that ground, and also because they had works where they could manufacture that ore too; although any person owning that ore could have erected works just as cheaply.

Q. In making up your mind as to the advisability of that purchase did you take into account the matter of eliminating competition with the Union-Sharon; did that weigh with you at all?

Mr. Dickinson: I object to that as immaterial, and irrelevant.

The Witness: Not at all.

By Mr. Severance:

Q. How were the Union-Sharon fortified as to ore reserves as compared with other steel manufacturing companies?

A. They were comfortably fixed.

Q. Your attention was called by counsel on direct examination to the minutes of a meeting of the Carnegie Steel Company of New Jersey on June 6th, 1900, appearing at pages 439 and 440 of Government Exhibits, Volume II, and particularly to this language which purports to be a part of a

statement made by you at that hearing: "Judge Gary thinks that if we make a contract as now proposed they can find a way to pay us the amount due us, which approximates $200,000, and make the further payments or rebates required." Did Judge Gary make any such statement to you?

A. He did not.

Q. When did you first meet Judge Gary?

A. After the Steel Corporation was formed, in 1901.

Q. You had never met him in your life before that time, had you?

A. I never saw him, to my knowledge.

Q. Your attention was called by counsel to what purports to be a report by you on the ore question, submitted by Mr. Schwab at the meeting of the Carnegie Steel Company, Limited, on January 2nd, 1900, appearing at pages 1316-19, Volume III of Government Exhibits. Following the example of counsel I will ask you to look at that. You looked at it for them the other day. You recall reading that the other day when counsel had you under examination?

A. I do.

Q. The estimate of ore reserves on the Iron Range in the Lake Superior District which was submitted shows 18,500,000 tons of ore controlled by the Oliver Iron Mining Company on the Vermillion Range, and 5,500,000 tons controlled by the Federal Steel Company on that range, and shows no ore on that range controlled by any other company, does it not? Look at that and see if I am correct.

A. There was no other ore on that range controlled by any others.

Q. Am I right in my statement that there was no Vermillion ore controlled by any other persons outside of the two that I have named?

A. That is what I am trying to say, that there was not. There were no interests there except the Oliver Mining Company and the Federal Steel Company.

Q. Have you any knowledge as to whether the proportions of the ore holdings by the different companies continued down to the organization of the Steel Company in April, 1901? I mean the proportions shown on this table.

A. What is the date of that?

Q. January 2nd, 1900, fifteen months before.

A. I presume they did, approximately. Of course there were constant explorations of the Mesabi properties and other properties going on all the time, but they were going on at practically all mines all the time, so that I would assume that the proportion continued as it was during that year.

Q. That you merely assume from your general knowledge? You have no direct knowledge on the subject?

A. No. I speak from my knowledge of the way mining operations and explorations were conducted.

Q. These are all estimates made in round figures?

A. Yes.

Q. Enlargements of those estimates by development work may have shown changes that you do not know about?

A. They probably would show some changes, but I do not consider in any great degree.

Q. At this time that you have mentioned the Western Mesabi had not come in, in 1900, had it?

A. No, it had not.

Q. And the Cuyuna Range had not come in?

A. It was not known then.

Q. In this report appears this language: "Notwithstanding all the exploration during the past three years on the Missabe Range, there has been found but one new ore body, all the ores shown up during that period have been simply the enlarging of known ore bodies, and the same is true on the other ranges." Just what does that mean?

A. That means that iron ore is ordinarily determined in extensive basins, as you might term it; you might have explorations disclosing a considerable amount of ore, and that might extend over three or four different ownerships, and represent a larger development of ore, but it is practically the same basin of ore. When you come to the older ranges there is practically no large deposit of ore that has been found in which the original deposit was not exposed on the surface, or, as they say in mining terms, had come up to the grass roots; and starting with that outburst of ore on the surface the lenses of ore and that deposit of ore may extend for a long distance in even large tonnages of ore, although it is the same old original deposit.

Q. As I understand that explanation, when you say, "Notwithstanding all the exploration during the past three years on the Missabe Range, there has been found but one new ore body, all the ores shown up during that period have been simply the enlarging of known ore bodies," you do not mean that the new ore has been ore that belonged to the companies named in the table here as part of an existing mine, but you are speaking as to the geological discoveries?

A. Yes, the geological location of these ores.

Q. Irrespective of ownership?

A. Irrespective of ownership; and as a matter of fact, at that time we practically counted the Mesabi Range, from the Iron Range Road over to about Hibbing, Minnesota. Since that time there have been large deposits opened up over towards the Mississippi River, in what is known as the Western Mesabi and the Cuyuna Range.

MR. DICKINSON: Give the date.

MR. SEVERANCE: This is January 2, 1900.

By MR. SEVERANCE:

Q. You mean since the date of this report, January 2, 1900?

A. Yes.

MR. DICKINSON: If he could locate the time when the Cuyuna was opened, and the other, it might help to shorten it.

By MR. SEVERANCE:

Q. Do you remember about the time these other parts of the range came in, and the Cuyuna came in west of Hibbing?

A. No, I can not state definitely. They began working over there I think about 1903, perhaps.

MR. DICKINSON: At Cuyuna?

THE WITNESS: (Continuing.) And in 1905 there were explorations going on along there all the time; it takes long years of exploration to determine practically the existence of large bodies of ore.

MR. SEVERANCE: All that I was developing was that when he was speaking here he was not speaking of ownership but of the geological formation.

MR. DICKINSON: Yes; I thought it might perhaps save further questions.

By Mr. Severance:

Q. In this correspondence to which attention was called the other day between Oliver and Gates there was a letter dated May 12, 1898, at page 1,280, in which this expression appears—a letter signed by Oliver, addressed to Gates:

"The following are some of the properties that have been pressed upon us: The Miller lands, the Shaw Lands, The Duluth Mining Co. lands, The Sauntry Lands, the Alpena Lands, *The Rouchleau-Ray lands.*"

Do you remember those respective properties, anything about them now? Take, for instance, the Miller lands; where are they?

A. I can recall all those properties except the Duluth Mining Company; I am not clear as to that.

Q. Do you know what became of those lands, the Miller and Shaw lands, and the others?

A. I know the Alpena and Sauntry went into the Steel & Wire Company; they were taken by that company, and the Shaw—I have forgotten.

Q. That was in 1898. Mr. Oliver says those are some of the properties that have been pressed upon us. Refreshing your recollection by that, to which your attention was called by counsel the other day, what would you say as to whether or not there was activity up there at that time, and large amounts of land for sale or lease?

A. Yes; you could buy large tonnages of ore at that time.

Q. Your attention was called the other day to some minutes relative to the Wabash Railroad, and the Pittsburgh Terminal people; do you remember that?

A. I remember that.

Q. Who was the man in the Carnegie Steel Company organization that had to do with the railroad matters; that is, the acquisition of railroads or the construction of railroads?

A. Mr. Carnegie was the most active.

Q. That is, Mr. Carnegie looked after that himself, did he?

A. He and Mr. Frick. Mr. Carnegie always felt that the railroad end of the business was something he was particu-

larly acquainted with, having been an officer of the Pennsylvania Railroad.

Q. Your attention was called to a report which purports to have been made by you on May 1, 1899, page 1247 of the Government Exhibits, which appears under the head of a memorandum relating to mining properties; and in that appears this statement:

"With respect to the non-Bessemer properties in Michigan—we now control nearly all of the mines in the Iron River district."

What is the fact as to the growth of the Iron River district after that?

A. At that time the Oliver Iron Mining Company was practically the only operating concern in the Iron River district. Since that time I presume there are half a dozen operations there, and the district has turned out to hold a tremendously large body of ore—far beyond anything that was ever suspected at that time.

Q. That is, at the date mentioned, May 1, 1899?

A. Yes; far beyond anything that was ever contemplated.

Q. Who controls that ore?

A. The Corporation today only have their original holdings there, which are relatively very small. Pickands, Mather & Company are interested there, and Rogers, Brown & Company, and I believe Zimmerman of Cincinnati has a mine there, and other ore merchants.

Q. You stated on direct examination, when asked with reference to the mines in Tower, that the greatest inducement to building the Iron Range Railroad was the mines at Tower. Is it not a fact that that road was built and has always been maintained as an ore shipping road, and that its general traffic is a mere incident?

A. It was put up there first on account of a development of iron ore at Tower on the Vermillion Range; and outside of what little timber was contiguous to its line in the early days, it has been operated entirely as an ore-carrying road to take the ore from Tower, and then the later development to the east, at Ely.

Q. Where was the Chandler mine located?

A. At Ely.

Q. Is that mine exhausted or is it still in operation?

A. It was supposed to have been exhausted years ago, but I am told they are still getting a little ore out of that mine. As a matter of fact, there are no deep mines—that is, mines of the old range character—since the opening of the Marquette range sixty years ago, that have been exhausted.

Q. But the amount of ore taken from the Chandler is very small?

A. It is very small.

Q. Are they still mining at Tower?

A. Yes; they are still mining at Tower.

Q. Do you know who built the Iron Range Road?

A. I think Charlemagne Tower did.

Q. Of Philadelphia?

A. I think he was the principal factor in its construction.

Q. And it was built, as you say, to reach that mine?

A. That was the sole purpose of constructing that road up through that country.

Q. Mr. Tower was not affiliated with any of the regular trunk line railroads, was he?

A. I do not know.

Q. So far as you know, he was not?

A. So far as I know he was not.

Q. What was the purpose of building the Duluth, Missabe & Northern Railroad, if you know?

A. That was built to supply the Mesabi Range. The mines were developed there far west of the Iron Range Railroad, and the Iron Range would not build in; and Captain Sellwood of Duluth told me—

MR. DICKINSON: I object to what Captain Sellwood told the witness. The witness should confine his statements to his own knowledge with respect to these matters.

By MR. SEVERANCE:

Q. The Iron Range would not build in, and then who built the Missabe Road?

A. The Merritts built it.

Q. They were large holders of iron ore on the Mesabi, were they not?

A. They were at that time, in the early days.

Q. Then that road was built likewise in order to get ore to market, was it?

A. Absolutely.

Q. And has that road always been operated chiefly as an ore-carrying road?

A. Particularly for that purpose.

Q. That was under your charge, was it not? the operation of that road and the Iron Range were both under your charge while you were with the Steel Corporation?

A. Yes.

Q. Did any of the operators of mines or shippers of ore outside of the Corporation ever complain to you during that period of the character of service given?

MR. DICKINSON: That is objected to as irrelevant and incompetent.

THE WITNESS: Never once.

By MR. SEVERANCE:

Q. I ask you the same question with reference to the Missabe that I did with reference to the Iron Range—if the outside traffic of that road has not also been an incident only, the principal business being the transportation of ore?

A. The transportation of ore has been the principal business of the Iron Range, and what supplies were necessary to take up for mining operations.

Q. You say the Iron Range; you mean the Missabe?

A. The Iron Range and the Missabe both.

Q. Do you remember what year the Hill road got into the Mesabi Range?

A. I do not know exactly what year it was. Of course they had the old Wright & Davis road, and that was connected on to West Superior.

Q. But you do not remember the date?

A. I do not. It was somewhere along 1900 or 1901, along there.

Q. Aside from the branch that runs up into the Mesabi Range, the Hill road running down to Superior is a part of the through line of the Great Northern, is it not, from the Red River Valley to the head of the Lakes?

A. I understand so.

Q. And that road has, in addition to the ore tonnage coming off the range, the general business moving back and forth between the agricultural regions of western Minnesota and the head of the Lakes?

A. Yes; it is a part of the Great Northern system.

Q. And in that respect it differs from the Iron Range and the Missabe, which are chiefly confined to the ore traffic?

A. The Iron Range and the Missabe Roads, as they exist, would have no business when the ore was exhausted.

Q. They have interchanged some business with the Canadian Northern? Or has that been since your day?

A. I think that was after or just about the time I left the Corporation.

Q. That has been built into Duluth, now?

A. Yes.

Q. That is a new line coming off the range, is it not?

A. Yes.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS.

JAMES GAYLEY,

the witness under examination at the taking of recess, resumed the stand.

CROSS EXAMINATION (Continued),

By Mr. Severance:

Q. Mr. Gayley, one question I neglected to ask you about the use of Cuban ores; does not the Maryland Steel Company at Sparrows Point, Maryland, use the Cuban ores?

A. Very extensively.

Q. That is affiliated with the Pennsylvania Steel, is it not?

A. Yes, sir; it is practically the same management

Q. In respect to its plant down there?

A. Its plant is at Sparrows Point, Maryland.

Q. One more question about the Hill ores. You spoke of the erection of the washing plant to wash those ores and some others; all of the ores embraced in the Hill lease were not sandy ores requiring washing, were they?

A. No.

Q. Only a portion of them?

A. Only a portion of them.

Q. At the time that the Oliver Mining Company was owned, five-sixths by the Carnegie Company and one-sixth by the Oliver-Snyder interests, was the Oliver Company a seller of ore in the market?

A. No.

Q. Was the ore taken out of the mines of the Oliver Mining Company divided five-sixths to the Carnegie and one-sixth to the Oliver people?

A. It was; and then what the Oliver interests could not use, the Carnegie Company got at practically cost.

Q. And the five-sixths that would accrue to the Carnegie Company were all used by the Carnegie Company?

A. All used and none sold.

Q. You were asked a number of questions with reference to buying pig iron; was there any time that pig iron was bought as far as you know when the purchase of the same involved the shutting down of the furnaces by the Carnegie Company or the United States Steel Corporation?

A. No; they never shut down any furnaces and bought pig iron on the outside.

Q. That is what I mean.

A. No; they never shut down furnaces in order to buy pig iron on the outside for the purpose of steadying the market.

Q. That is what I mean; at those times you speak of.

A. Yes, sir.

Q. Until you left the Corporation the first of January, 1909, was the blast furnace capacity of the Corporation as great as was necessary to furnish the iron for steel-making, or was it always a buyer?

A. They always bought some under brisk conditions of trade. In other words, to run their mill capacity to the fullest limit they needed to buy some pig iron currently in the market.

MR. SEVERANCE: That is all.

MR. KELLOGG: No questions.

RE-DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Do you state, Mr. Gayley, that at no time when the Corporation was buying pig iron any of its furnace capacity was shut down?

A. I know of no time during my connection with the Corporation that the furnace capacity was shut down, and that diminished product was purchased on the outside.

Q. Do you know as a fact, and do you state as a fact, that, during the time the purchases of pig iron were made on the outside, no furnaces of the Corporation were shut down?

A. I am stating that as a fact to my best knowledge and belief.

Q. I understood you to say that the discussion about building tube works first began in 1899.

A. Yes, sir.

Q. When did the discussion first begin about going into the wire business, or nails?

A. That began at the same time. It was at a meeting of the Carnegie Steel Company board, and Mr. Carnegie was there, and the National Tube Company had been purchasers of steel from the Carnegie Company, and they had proceeded to erect their own blast furnaces and steel mill and supply themselves. The Carnegie Company was likewise a supplier of steel billets to the American Steel & Wire Company, who were also expanding their own manufactory, and at this meeting in 1899 Mr. Carnegie asked the various members of the board in what direction they ought to expand in the making of increased output. At this meeting it was suggested by one that they should go into tubes, and by another that they should go into steel wire and its products. So the first suggestion came at the same day.

Q. Now, were these suggestions followed by a discussion of concrete plans for the purpose of taking up and going into these various kinds of work?

A. Followed later.

Q. Later?

A. Yes.

Q. How long after this discussion before you began to consider definitely plans for going into these various kinds of manufacture?

A. It was a matter working in the minds of the members of the board right along, but I do not think it was until 1900 that they began to take definite shape, and to make plans for location and extent of plant.

Q. They began to take definite shape in 1900?

A. In 1900.

Q. And then did the plans and purposes in this direction continue on up to the time the Carnegie Company was taken over by the Steel Corporation?

A. No; they were abandoned in the autumn of 1900. Mr. Carnegie in the spring and early summer was a strong advocate of going ahead, but during the summer Mr. Phipps and Mr. Lauder were very doubtful about proceeding at that time and they went abroad and saw Mr. Carnegie, and Mr. Carnegie changed his opinion and concluded that it was not the proper time to expand, and they were then laid on the table.

Q. They were abandoned for the present, were they?

A. They were.

Q. You say during the summer of 1900?

A. In the autumn; in the early autumn.

Q. Of 1900?

A. Of 1900.

Q. What month were they laid on the table?

A. I can not recollect.

Q. When did Mr. Phipps meet Mr. Carnegie abroad, the time to which you referred there?

A. I think in the summer.

Q. In the summer?

A. Yes.

Q. Now, Mr. Gayley, I call your attention to the minutes of the Carnegie Company of New Jersey of November 12, 1900, page 450, Volume II of Government Exhibits, and read the following:

MR. SEVERANCE: I object to this on the same grounds as heretofore, and further on the ground that counsel is cross-examining his own witness.

By MR. DICKINSON:

Q. (Reading) "MR. SCHWAB: Mr. Carnegie and I talked over the location for Tube Works yesterday and we are fully convinced that Conneaut is the place for establishing the same. The site can be obtained and the road to connect with the Bessemer road can be built and the entire cost for the site and road will not exceed $1,000,000.00. The site contemplated covers about 2,500 acres.

"MR. L. C. PHIPPS: We figure that about 1,000 acres could be devoted to selling for homes and which it is believed would bring on an average of about $2,500.00 per acre.

"MR. CARNEGIE: I place the amount which we would receive for ground sold for other purposes at about $1,500,000.00, but of course this money would come to us gradually and would not be available at the time of building our plant.

"MR. HENRY PHIPPS: To what extent is Conneaut more favorable than a plant if placed adjoining some of our present works?

"MR. SCHWAB: We figure that there would be $1.07 per net ton in favor of Conneaut on all materials coming in to the works for manufacture."

Now I will ask you whether or not that refreshes your memory, and whether the plans for building tube works at Conneaut had been abandoned November 12, 1900.

MR. SEVERANCE: I make the same objection.

THE WITNESS: Irrespective of that; I may be inaccurate as to the exact month, but my statement that Mr. Carnegie changed his opinion before the formation of the Steel Corporation is correct.

By MR. DICKINSON:

Q. But I am asking your now about your statement that it was abandoned in 1900.

A. It was abandoned in 1900, as near as I can recollect. It was abandoned, anyway, before the Steel Corporation matter came up.

Q. But do you recollect, notwithstanding this record in the minutes, that it was abandoned on November 12, 1900,

when this appears to have transpired as I have read it to you?

A. The record may be all right as to those minutes, and it might be abandoned the next week by Mr. Carnegie.

Q. Well, I mean at that time had it been abandoned?

A. Perhaps not, according as you read the minutes.

Q. I call your attention, Mr. Gayley, to the minutes of the Carnegie Steel Company of December 11, 1900, appearing on page 1905, et seq., Government Exhibits, Volume VI, and read as follows——

MR. SEVERANCE: I make the same objection to that question, and as incompetent and immaterial.

By MR. DICKINSON:

Q. (Reading) "Land at Conneaut. The President here spread before the Board a map showing the territory at and near Conneaut Harbor, on which options have been taken, in order that the location might be more clearly understood.

"He stated: This is the property on which options expire very soon, and we must decide what we are going to do. I have been over the ground and think we have taken options on more than is necessary. The property line between our proposed works and the town of Conneaut will be for residence purposes. We ought to take about 500 acres in there to sell for town lots."

Now, what proposed works were referred to there?

MR. SEVERANCE: I make the same objection to that question, and as incompetent and immaterial.

THE WITNESS: Either the wire or tube works, when their construction should have been decided upon, or both.

By MR. DICKINSON:

Q. Do you say that at that date, to wit, December 11, 1900, when this discussion took place, that they had abandoned any plans toward erecting tube or wire works at Conneaut?

A. What you have read to me has no bearing on that subject of what they proposed to do. It simply shows the location of the property and shows its adaptability for a plant whenever they should choose to build.

Q. Would they have needed as much as 500 acres if they had proposed to establish any works?

A. Oh, yes. The idea was to secure that property for extensions of any kind in the future. In other words, and I was personally very familiar with that proposition, it was considered that further extensions on account of the scarcity of land in and about Pittsburgh should be on the Lakes; and Conneaut, which was the harbor controlled by the Carnegie Steel Company and served by their own railroad, was the best suited location on the Lakes.

Q. Now, when it speaks of "the property line between our proposed works and the town of Conenaut will be for residential purposes," state what works up to that time had been proposed to be erected at Conneaut.

A. I have already stated.

Q. Would you mind stating it again?

A. That it was proposed to erect a wire works or a tube works, or both.

Q. Now, then, this proceeds at the bottom of the page:

(Reading) "After some little further discussion of a general character with regard to details, it was moved by Mr. Lauder, seconded by Mr. Singer, that the officers of the Carnegie Land Company be authorized to conclude the negotiations and make the purchases of the property at Conneaut, as described."

State whether or not that was done.

A. It was. The land was purchased.

Q. When was that purchase consummated?

A. I think about that date.

Q. That date I asked you was in December, 1900?

A. Yes; naturally very soon after it was authorized.

Q. State, Mr. Gayley, whether or not after the question first came up for consideration of erecting a tube works and wire works at Conneaut, the Carnegie Company continued steadily along the lines of procuring land for the erection of works and consummated the purchase of those lands before it was taken over by the United States Steel Corporation.

A. They got an option on the lands and purchased the lands at Conneaut before it was taken over by the Steel Corporation.

Q. You testified this morning in regard to a corporation having a great variety of ores, some being of a lower grade, and the capability that such a corporation had to utilize the lower grade ores by reason of having, at the same time, the higher grade ores to mix with them, thus utilizing the lower grade ores. State whether or not a concern or corporation or company in the same territory having only the lower grade ores to which you have referred, and not the higher grade and richer ores to mix with them, could compete on the same basis with a company which had and could mix and market both grades, as you have described.

A. It stands to reason that a manufacturing corporation using a lean ore cannot compete under the same cost of mining with a corporation that mines a rich ore; but I know of no such conditions as are described in the question.

Q. You were questioned with regard to taking over the properties of the Tennessee Company, and as to what investigation had been made of the properties of the Tennessee Company by the officers of the Corporation before the consummation of the purchase of the stock of the Tennessee Company. Do you or not state, affirmatively, that no investigations had been made of those properties at the time the purchase was made by the officers, or agents representing the officers of the Corporation?

A. There were no investigations made. If they had been made it would have been under my direction, and I gave no directions to that effect until after the Tennessee Company was taken over by the Corporation.

Q. You did state, I believe, however, that you reported to Judge Gary the substance of the reports as to ore, and I do not know whether you said coal holdings or not, but I will ask you whether it included coal holdings, made to you by Mr. Witherbee.

MR. SEVERANCE: I do not think the word "report" is a fair characterization of that in either case, Judge, because he said there was no written report. He said that Mr. Witherbee made this statement to him at lunch, and that he verbally made the report to Judge Gary. You speak of it as though it was a formal report. I do not think you mean that, Judge.

MR. DICKINSON: I think he used that word, because my note puts it down that way; but I am not sure.

MR. SEVERANCE: You remember what his testimony was?

MR. DICKINSON: No; I do not remember. My note here says, "Mr. Witherbee reported".

MR. SEVERANCE: Mr. Witherbee told him—

MR. DICKINSON: At any rate, I do not care whether you call it a report or a statement. That is a mere quibble about words.

MR. SEVERANCE: I do not mean to quibble.

By MR. DICKINSON:

Q. The question is whether or not you reported to Judge Gary substantially the statements made by Mr. Witherbee to you in regard to the holdings of the Tennessee Company in iron ore; and, if coal properties were mentioned, also as to coal properties?

A. The statements that were made to me by Mr. Witherbee, respecting the raw material holdings of the Tennessee Company I repeated to Judge Gary.

Q. Did you rely on the statements made by Mr. Witherbee?

A. I did.

Q. Did you make any representation to Judge Gary that you thought they were reliable?

A. I do not know. I assumed they were, and always had it in mind.

Q. Did you assume that he would accept them as reliable?

MR. SEVERANCE: I object to that as asking for a conclusion. He could not know what was passing in Judge Gary's mind. It is not likely that Judge Gary thought Mr. Gayley would tell him anything that was not so.

By MR. DICKINSON:

Q. I simply wanted to know this. When you were considering this purchase and told Judge Gary what Mr. Witherbee had told you about the property, did you expect him to rely on that statement, and did he, so far as you know, rely on it?

MR. SEVERANCE: I object to that as asking for a conclusion.

THE WITNESS: I stated to Judge Gary the information that was available to me at that time; and I gave it to him as what I considered to be a statement of facts.

By MR. DICKINSON:

Q. Did he question it as being the fact?

A. He did not make any comments on it.

Q. Did you make the statement knowing, at the time, that he had under consideration the purchase of the stock of the Tennessee Company?

A. He told me, at that conference, that it might be found necessary, on account of the financial situation, to take over the Tennessee Coal & Iron Company, which he deplored. I do not recall having any knowledge of the matter being under consideration until he had asked me about the raw material situation.

Q. So far as you know, is that all of the information that the officers and directors of the United States Steel Corporation had in regard to the character and extent of the properties of the Tennessee Company at the time they made the purchase?

A. What they had I do not know. I can only say as to what I had.

Q. Was that all you had?

A. That is all that I had.

Q. Did you favor the purchase?

A. I favored the proposition to acquire for the Corporation a large tonnage of raw material, without taking into consideration any price relating thereto.

Q. Then you favored the acquiring of the raw material that the Tennessee Company then controlled, without your mind being especially directed to the question of what was to be paid for it?

A. That is a precise statement of the situation.

Q. Referring again, Mr. Gayley, to the question of your statement in regard to the abandonment for the time being of the plans of erecting tube works, I call your attention to the minutes of the Board of Directors of the Carnegie Steel Company of November 6, 1900, at which you are recorded as being present, at page 1899, et sequitur, of Volume VI of Government Exhibits.

MR. SEVERANCE: I make the same objection as heretofore made to similar readings from minutes as an improper way to refresh the recollection of the witness.

By MR. DICKINSON:

Q. (Continuing) I read from page 1901:

"Mr. Peacock: I can report that we succeeded in selling the National Transit Company, during the past week, plates enough to keep them supplied until we can arrange for the tubes complete about 50,000 tons. The price is 1.15c. per pound for the narrow, and 1.20c. for the wider plates.

"Moreover, the National Tube Company are likely to want to purchase any moment, they having suspended orders for machinery for their new open hearth plant, hoping we will not go into the tube business, as it is rumored we are likely to do.

"Mr. Schwab: When I was in New York last week, J. Pierpont Morgan sent word he would like to see me. I did not comply for several reasons. I thought it was about railroad matters, but I did meet Mr. Steele, who is his chief assistant, and was informed it was in reference to tubes; that the Morgan people had financed and put through this new tube combination, and were much alarmed about our going into tubes.

"I think when Mr. Carnegie comes out here next week and we have definitely decided as to site, we should make a definite announcement of our intentions."

Now, I will ask you, Mr. Gayley, whether there had been an arrangement or plan to erect tube works at that time—November 6, 1900.

MR. SEVERANCE: I repeat the same objection.

THE WITNESS: I have already stated that I cannot determine the exact month. I can simply state the fact that the plan was abandoned that had been so vigorously advocated earlier in 1900.

By MR. DICKINSON:

Q. Mr. Gayley, I will ask you this: When Mr. Peacock stated, as reported here, that "we succeeded in selling the National Transit Company, during the past week, plates enough to keep them supplied until we can arrange for the

tubes complete about 50,000 tons," what works did he have in contemplation, or did your directors who were then in the meeting where you were, have in contemplation through which they could make tubes complete?

A. We had in contemplation a new tube works, naturally.

Q. At Conneaut?

A. That was where it was finally decided to locate the tube works, if they went into it.

Q. He was referring, was he, to the tube works that they were contemplating building?

A. He was referring to the contemplated tube works.

Q. You were questioned, Mr. Gayley, about the Carnegie Company repairing works and building, when necessary, new works, extending their business, and as to their extending their business abroad, especially at times when trade was slack here. I will ask you what the policy of the Carnegie Company was as to aggressiveness in business all the time?

A. I considered it the most aggressive company in expansion, in pursuit of business and preparation to take business of any company in the United States.

Q. Throughout its history, up to the time of its absorption by the United States Steel Corporation, while you were connected with it?

A. Ever since I was connected with it.

Q. Mr. Gayley, do you know of any iron ore having been brought from Mexico and sold in commerce, or used by those bringing it in the manufacture of iron or steel in the United States, between the time of the formation of the United States Steel Corporation and October 26, 1911?

A. No, sir; I do not.

Q. I will ask you the same question in regard to Venezuela.

A. No, there has none come from Venezuela.

Q. Do you know of any iron ore that was mined in Utah and sold in competition or used for making steel in competition with the iron ores that came from the Lake Superior District between the time of the formation of the United States Steel Corporation and October 26, 1911?

A. There was none actually mined and used, but it was there, and the fuel was there, and it could be made available if anybody had desired to go into that country.

Q. As a matter of fact was any of it, within that period, made available by anybody?

A. None that I know of.

Q. I will ask you the same in regard to California.

A. No. California ores will not be available until the Panama Canal is finished.

Q. I will ask you the same in regard to Texas.

A. I do not know of any of that ore being shipped to northern works.

Q. To what extent was ore mined in Texas between April 1, 1901, and October 26, 1911?

A. I think to a very small extent. All the work that had been done there had been in the direction of proving up the deposit.

Q. Do you know of any of it having been manufactured into steel during that time?

A. No; I do not.

Q. Mr. Gayley, I will ask you whether or not the total amount of ore mined and used for the year 1910 from the State of New York exceeded, during that year, more than 2.26 per cent of the entire amount of iron ore used in the United States that year?

A. I do not know. I have no data to tell you whether it is correct or not.

Q. I will ask you whether or not, as compared with the whole, it was comparatively insignificant?

A. It was a large tonnage of ore.

Q. The amount mined and used?

A. Yes. It represented a large tonnage of ore.

Q. What tonnage did it represent? Do you know?

A. I do not; but I know by their operations there that they are large producers of ore.

Q. What do you mean by "large producers"? I want to get your idea?

A. I suppose they would make three or four hundred thousands tons a year.

Q. Three or four hundred thousand tons a year?

A. Yes.

Q. How much did the United States Steel Corporation get out in the year 1910?

A. I don't know.

Q. In any year, from 1901 down to 1911, inclusive, can you name, in any year, the total amount of the ore that the United States Steel Corporation produced?

A. I think they produced about 8,000,000 tons the first year of their existence.

Q. Did that increase or diminish?

A. That increased because their work grew.

Q. Did or not the total amount of ore mined in the State of Wisconsin for the year 1910 exceed more than 2.02 of the entire output of ore of the United States for that year?

A. I do not know.

Q. Have you any idea as to the amount?

A. I have not.

Q. Was it an appreciable amount as compared to the whole or not?

A. I do not know.

Q. I will ask you the same question about Virginia, of that year.

MR. SEVERANCE: That is another field. We did not touch it. We are much obliged to you.

By MR. DICKINSON:

Q. I will ask you about Virginia, the same question.

A. I can not tell from memory what the statistics of mining operations are in any State.

Q. Was it an appreciable quantity as compared with the whole, taking into consideration the iron and steel industry for any year during the period from 1901 to 1911?

MR. SEVERANCE: I object to that as entirely indefinite; "appreciable" does not mean anything. It might mean one thing to one man and another thing to another man.

MR. DICKINSON: Then strike it out; we will get at something a little more definite. We are very glad to do it.

MR. SEVERANCE: We are glad to have you do it; we are all glad.

By MR. DICKINSON:

Q. Did or not the amount of ore mined and sold from the State of Virginia during any year from 1901 down to 1911,

inclusive, enter in seriously as a factor in the production of steel?

A. There is a very limited quantity of iron made from Virginia ores that is used in the making of steel. The great bulk of that ore goes into foundry irons.

Q. Do you know whether the whole amount was as much as two per cent?

A. What is that?

Q. The whole amount of ore produced in Virginia as compared with all the ore produced in the United States for the year 1910?

A. I have not the statistics in my mind.

Q. Can you give any approximate estimate of the amount of ore for the same year produced in the State of Colorado?

A. No, I haven't that.

Q. Or New Mexico?

A. I do not have those statistics in my mind.

Q. Or Washington or Wyoming?

MR. SEVERANCE: Do you think it does the record any good to have him continue to say "I have not those statistics in mind"? You have got those statistics in evidence, or at least you tried to put them in. He hasn't them in his mind.

MR. DICKINSON: My time is too valuable to be taking it up if I did not think it would do some good.

By MR. DICKINSON:

Q. Mr. Gayley, was there a large or small amount, comparatively, of ore mined in the State of Pennsylvania and used in the steel industry for either one of the years that I have mentioned?

A. I would say that by far the larger portion of the ore mined in Pennsylvania in recent years has gone into the making of steel.

Q. Do you know to what extent ore was mined in the State of Pennsylvania for the year 1910?

A. I don't know.

Q. Do you know in what mines there?

A. Oh, yes.

Q. Have you been to them?

A. Yes.

Q. Name some of them, will you?

A. The greatest mine in Pennsylvania today is the Cornwall Mine.

Q. I am not speaking of today. I am speaking of any years between 1901 down to 1911.

A. Any time during that period the greatest mine in Pennsylvania was the Cornwall ore bank, largely controlled by the Pennsylvania Steel Company.

Q. Do you know the amount of tonnage of ore in one of those years that was mined there?

A. I do not.

Q. Can you give it approximately?

A. No, I can not approximately.

Q. Mr. Gayley, I will ask you whether or not during the year 1910 the State of Minnesota produced more ore that was used in the steel industry than all the balance of the United States put together.

A. I presume that is correct.

Q. Well, is that true for all of the years preceding that back to and including 1901?

A. For steel making, your question is?

Q. Yes.

A. Yes; Minnesota since 1901 has been the largest producer of ore for steel-making purposes.

Q. I am not asking merely whether it is the largest—I am asking whether it is larger than all the balance of the United States put together, for those years.

A. I believe it was.

Q. I will ask you whether or not for each of those years the tonnage of ore used in steel products by Michigan was not next largest to Minnesota.

A. Yes.

Q. I will ask you whether or not Alabama was third?

A. Well, covering that whole period, I do not know what the relation was between Alabama and Pennsylvania in that respect.

Q. Well, from the years that you became familar with Alabama; that is, 1907, 1908 and 1909 until when you left the Corporation, what would you say?

A. I think it was third.

Q. Was any ore mined and shipped from the Cuyuna Range prior to the year 1910?

A. I think there was.

Q. How long prior thereto?

A. I think shipments have been made propably for several years.

Q. Prior thereto; prior to 1910?

A. Well, not very much before that, if there was—— no, I mean two or three years prior to the present date. In 1910 my recollection would say that the shipments were about 1909 and 1910, along there.

Q. They began about 1909 or 1910?

A. 1909 or 1910, as far as I can recollect.

Q. Do you make any positive statement about that?

A. No, I have not been familiar with that district.

Q. You do not wish to say positively that there was any during 1909 or 1910?

A. No; I have not been in close touch with that district, so I can not say definitely.

Q. You were questioned, Mr. Gayley, the other day, in regard to the Carnegie Steel Company and the price of pig iron and the relative position of that company and other companies or other manufacturers of steel in respect to the price of pig iron. Were there or not any makers of steel in the years 1898, 1899 and 1900 who relied entirely on purchases of ore and who did not own ore of their own?

A. I do not know of any. I can not recall any steel company now that relied wholly on purchases of ore. As far as I recollect, all the steel companies owned some ore mines and likewise purchased some iron.

Q. State whether or not there were some who purchased relatively a larger amount than they themselves mined.

A. Well, I know the Pennsylvania Steel Company purchased more than they mined from the Lake Superior region.

Q. Now, take a company that ordinarily bought more ore than it mined, and which at a particular time had not stored up any ore of any considerable quantity that it purchased; how would that company be affected by the rise of the price of ore, by agreement or otherwise, or the failure to reduce prices, through competition?

A. Well, if that were a fact as you state it, it would not be of any great advantage; but, as a matter of fact, taking the illustration I gave of the Pennsylvania Steel Company, which were buyers of more ore than in the Lake regions they mined, they had a long term contract with the ore merchants in Cleveland which secured to them a large tonnage of ore at a very low price.

Q. When was that contract made?

A. I think a year or two before the Steel Corporation was formed, several years.

Q. That would bring it what date?

A. I think that went back to perhaps 1898 or 1899, along there. I know of one case—

Q. With whom was that contract?

A. Corrigan, McKinney & Company made a very large contract to supply the Pennsylvania Steel Company with a large quantity of ore annually and at a very low price.

Q. Was that a fixed price?

A. A fixed price; yes, sir.

Q. Did you ever see that contract?

A. I never did.

Q. You are speaking of what some one told you?

A. Mr. Corrigan told me of the conditions under which it was sold.

Q. Then it is hearsay, is it?

A. Mr. Corrigan advised me.

Q. You got your information from what he told you?

A. Certainly.

MR. DICKINSON: I object to that as being hearsay and not responsive to my question, which only asks for the witness' own knowledge.

By MR. DICKINSON:

Q. Do you say or not that there was no manufacturer of steel, during either of the years 1898, 1899 or 1900, at periods when prices were steadied in the way you have described, that was not affected unfavorably by such steadying of prices?

A. I do not know of any.

Q. But do you know that they were not?

A. That program to steady prices—I have no recollection that it was ever carried out the way he had proposed to car-

ry it out to maintain the prices. I have no recollection that they were maintained.

Q. But if it were carried out, I am asking you whether you can state that you know of your own knowledge that there was no company at that time in the manufacture of steel that would have been unfavorably affected by such an arrangement if it had been carried out?

MR. SEVERANCE: I object to that as incompetent, based upon no evidence in the case, and attempted to be, if at all, based upon a statement which the witness has just made showing that such arrangments were never carried out, and it is a question not for expert testimony. The question asked for the conclusion of the witness on a non-expert question. It is irrelevant and immaterial.

MR. DICKINSON: I am asking for the knowledge of the witness on this particular point: Whether or not, if at any period during 1898, 1899 or 1900 the prices of ore were artificially controlled, there was any maker of steel who would not have been unfavorably affected.

MR. SEVERANCE: That is objected to on the ground the witness has already testified that he has no knowledge that prices of ore were controlled in that period, and the question is incompetent, and that it is not a question for expert testimony, and is immaterial and irrelevant.

MR. DICKINSON: I am not asking the witness if he knows that prices were controlled, but I am asking if he knows of any steel maker at that time whose condition in respect to ore was such that he would not have been unfavorably affected by an artificial control of prices in any of the years named?

MR. SEVERANCE: I object to that as a hypothetical question the way it is now put, not based upon any evidence in the case; as a question not for expert testimony; that it is incompetent, immaterial, irrelevant. The witness has already stated that he has no knowledge on the subject.

MR. DICKINSON: I do not know that he said that. I do not think he has had a chance to answer. As to the statement that there is no evidence, there is evidence in the minutes here that there was such an agreement and that it was carried out.

THE WITNESS: I do not know of one.

By Mr. Dickinson:

Q. Mr. Gayley, what independent furnace, or what operator of any independent furnace that purchased ore and made nothing but pig iron to your knowledge was anxious to have the price of ore kept up during either of the years named?

A. I think it was in 1900 the president of the Thomas Iron Company and the President of the Warwick Iron & Steel Company.

Q. Can you name any others?

A. That is all I can recall at the moment.

Q. Do you know the Hull-Rust Mine?

A. I do.

Q. How many pits are there in that mine from which they mine?

A. At the last time I saw it it was all open into one big pit.

Q. Do you know any mines where they mine from different pits, I mean any one mine property where the mining is carried on from different pit openings?

A. The Mesabi Mountain—

Q. I ask you if you know of any such?

A. Yes, if I can think for a moment. The Fayal is open in pits, and open ground.

Q. If there are different openings then would it be practicable for different railroad companies to serve different openings?

A. I suppose they could if they had the right territory to make an approach to the mine.

Q. If they were near enough to build into it?

A. Not only that; it depends on whether conditions are such that they can make a proper approach to the mine; open pit mines go down into the ground very steeply, a very steep grade. It might be suitable for one railroad to get an approach into that point, but an extremerly difficult thing for another one coming at the top to try and get in. It is only under practical conditions.

Q. Those vary under different circumstances?

A. Yes, under different circumstances.

Q. Do you state or not that it is impossible for any one large mine capable of having various openings to be served by more than one railroad in that section?

A. Why certainly it is not impossible.

Q. Do you state that it is not practicable?

A. In some cases.

Q. How?

A. In some cases.

Q. In some cases you do?

A. Yes.

Q. But generally do you say that in all cases it is not practical?

A. No, I did not say that. I said in some cases it might not be practical, and in other cases I doubt whether the railroad would care to go to the enormous expense to make it practicable.

Q. Mr. Gayley, I will ask you to look over the minutes of the Carnegie Steel Company, Limited, of July 19th, 1898, at which meeting you are recorded as being present, Government Exhibits Volume III, pages 1118 to 1126. Please look over them carefully, as I want to ask you a number of questions about that, and I will give you time to do it. (After a pause). Mr. Gayley, I call your attention to the following passage from what you have read of the report of Henry W. Oliver relative to the Pioneer Mine, beginning on page 1119:

MR. SEVERANCE: I object to this on the same grounds that I objected to the reading before, as leading, and an improper way to refresh the recollection of the witness.

By MR. DICKINSON:

Q. (Continuing) "In the statement I sent you (at the time tion, about one year ago), for presentation to Mr. Carnegie we had the Norrie and Tilden properties under considera- and Mr. Phipps, on your trip abroad, I argued the advisability of taking a lease of the Pioneer Mine, which adjoins the Chandler Mine on the Duluth & Iron Range R. R."

And as to the following passage on the same page:

"The Fee Owners, who are rich and strong and well versed in the value of large bodies of Bessemer ore, being interested in the adjoining Chandler property which has yielded such a magnificent revenue for the past fifteen years, have refused to make a reduction of the royalty or an extension of the lease, unless the lease-holders would give them in

hand a cash bonus of so large an amount that the leaseholders could not consent to it."

Who were the fee owners there referred to?

MR. SEVERANCE: I object to this as leading, as an improper way to refresh the recollection of the witness, and as not redirect. Nothing of this sort has been gone into on cross examination. It is immaterial, incompetent and irrelevant.

THE WITNESS: I don't know who they were.

By MR. DICKINSON:

Q. I call your attention to the following passage appearing at the bottom of page 1119: (Reading).

"The parties in interest on both sides, with the exception of Senator Spooner, are mainly North-Western lumber men, suspicious of each other, stiff and ugly to deal with, most of them in a fight with the Minnesota Iron Company, but all men who have a great appreciation of the value of their property."

State whether or not that recalls the matter to your mind so that you can now answer the question as to who some or all of them were.

MR. SEVERANCE: I make the same objection.

THE WITNESS: You asked me about fee owners?

By MR. DICKINSON:

Q. Yes.

A. I do not know.

Q. Who were the leasehold owners?

MR. SEVERANCE: I make the same objection.

THE WITNESS: Senator Spooner; Mr. Bardon is one that I know of as being one of the leasehold owners.

By MR. DICKINSON:

Q. I call your attention to the following passage from page 1120 that you have read: (Reading)

"The Pioneer Mine is undoubtedly the greatest body of Bessemer ore (other than Missabe) outside of our Norrie and Tilden Mines.

"Excepting our development on the Miller & Brown property adjoining the Pioneer, there has not been discovered or

developed in the Lake Superior Region, in the last twelve years, any other deposit of high grade Bessemer ore. I particularly emphasize this fact, to impress on you the growing value of this character of ore."

Then a statement purporting to have been made by you, appearing on page 1126:

"This is the largest body of Ore that can be negotiated for at this time."

Now state, Mr. Gayley, whether or not, as a matter of fact, it was true that, excepting the development of the Miller and Brown property adjoining the Pioneer, there had not been discovered or developed in the Minnesota region in the last twelve years, any other deposit of high grade Bessemer ore.

MR. SEVERANCE: The same objection.

THE WITNESS: That is true—eliminating the Mesabi Range.

By MR. DICKINSON:

Q. I will ask you whether or not it was true that this was the largest body of ore, outside of the Mesabi Range, that was then open to be negotiated for.

A. That is what we believed that deposit to be at that time.

Q. I am asking you now whether or not that was true.

MR. SEVERANCE: The same objection.

THE WITNESS: It was true at that time. It is not true now.

By MR. DICKINSON:

Q. But it is true that that was the largest body then known that could be negotiated for?

A. That is what I have said.

Q. I call your attention to the following passage on page 1120, that you have read:

"I therefore recommend the following:

"(1st.) The arrangement you and I made with Mr. H. H. Porter (which he has confirmed at two lengthy interviews I have had with him in New York since your departure), by which he agrees that if we give him 500,000 tons of traffic on his railroad, per annum, he will indirectly make such rates of freight as will allow us to deliver the Pioneer and neighboring ores at Lake Superior ports, at the same cost (counting the value of the ores as to iron, phosphorus, etc.), as our Norrie and Tilden ores."

In this connection I call your attention to the following passage appearing in the report made by you in the minutes of the Carnegie Company of New Jersey of June 6, 1900, Government Exhibits, Volume II, pages 439 and 440, relating to the question of rebates due by reason of previous shipments over the Duluth & Iron Range Railroad, where you are recorded as saying:

"We have, in accordance with our estimate, at least Ore enough in the Vermillion District for a twenty years' supply. The present general freight rate is $1.00. We have had an arrangement with railroad for some time to carry Ore at rate of 60 cents, paying currently, however, one dollar per ton, but we have not been able to collect our money for the reason that there was no fixed method of payment and railroad feared rebating. Judge Gary thinks that if we make a contract as now proposed they can find a way to pay us the amount due us, which approximates $200,000.00, and make the further payments or rebates required."

Now state, Mr. Gayley, whether or not, as of the date of that statement being credited to you, you were, by reason of your connection with the Carnegie Steel Company and the Oliver Mining Company, familiar with the fact that during the year 1899, pursuant to an arrangement previously entered into the Minnesota Iron Company interests had an understanding with the Oliver Iron Company interests or the Carnegie interests, or either of them, whereby it was to pay, directly or indirectly, a rebate of approximately 40 cents a ton on ores shipped over the Duluth & Iron Range Railroad, under an agreement or understanding whereby the Oliver interests or the Carnegie interests were to ship over the Duluth & Iron Range Railroad at least 500,000 tons of ore per annum.

Mr. Severance: I object to that, for several reasons. In the first place, it is indefinite, does not fix the parties between whom this imaginary arrangement was made; it is improper to attempt to refresh the recollection of the witness by reading these minutes, and is leading. The witness has already stated that he never had any conversation with Judge Gary on the subject.

Mr. Dickinson: I am not asking him about that conversation.

MR. SEVERANCE: Yes, you are. You read it to him, in a loud tone of voice. He also stated—

MR. DICKINSON: You are mistaken. I did not ask him about that conversation. He has already answered you about that, and said that he did not know; that that was hearsay.

MR. SEVERANCE: You just read it to him again.

MR. DICKINSON: I understand that; as a part of the passage; but I did not ask him about that.

MR. SEVERANCE: He has already stated that he had never seen Judge Gary, to his knowledge, at that time, and did not see him until after he was elected vice-president of the Steel Corporation, which was nearly a year afterwards. Therefore the question is based upon an improper basis, from any standpoint, and is attempting to suggest an answer to the witness by reason of an improper statement in this record, and I object to it as incompetent, irrelevant and immaterial.

By MR. DICKINSON:

Q. I am not asking you, Mr. Gayley anything about Judge Gary. I want you to understand that. This question has no reference to him; but inasmuch as counsel has spoken of the imaginary agreement, before you answer that question I will call your attention to the minutes of the Carnegie Company of New Jersey of July 9 1900, Government Exhibits, Volume II, page 445.

MR. SEVERANCE: Which is an agreement dated a month later than the date of this meeting, and therefore could have no application whatever to the agreement about which you are talking.

MR. DICKINSON: I object to the comments of counsel which are not objections to my question, but are comments and arguments upon the character of the testimony.

MR. SEVERANCE: I object to calling the attention of the witness to the minutes in question for the purpose stated, for the reason that the matter therein treated is an agreement which the witness has already been interrogated about fully on direct examination, and which bears a date later by over a month than the date of this meeting, the minutes of which have been read to the witness, and therefore can have no relation whatever to the imaginary agreement mentioned in the question.

MR. DICKINSON: Now that Mr. Severance has finished his speech, I will go on.

MR. SEVERANCE: It is an objection, not a speech.

By MR. DICKINSON:

Q. I read you from that passage:

"MR. SCHWAB: This agreement really fixes the rate at 60 cents per ton, no matter what the tariff rate may be, on a basis of one dollar tariff rate would mean a rebate of about $200,000.00 on last year's business; I think the agreement is all right.

"MR. GAYLEY: So do I."

Now I will have read to you the question that I asked, and, in connection with this passage, will ask you for an answer.

MR. SEVERANCE: I desire to add to my objection that the counsel in reading this last extract has failed to call the attention of the witness to the fact that the extract as mentioned by Mr. Schwab must be read with the context, which shows that it is a proposed agreement dated a month after the meeting previously read, and therefore can have no reference to the matter concerning which counsel has asked the question.

MR. DICKINSON: I am not asking him about that contract, but am referring to it as a part of the same thing, to be taken in connection with what I am reading him. My question which I will have repeated, applies now to the pre-existing agreement. I simply read him that to bring the whole matter to his mind.

(The stenographer thereupon read the prior question as requested by Mr. Dickinson, as follows:)

"Now state, Mr. Gayley whether or not, as of the date of that statement being credited to you, you were, by reason of your connection with the Carnegie Steel Company and the Oliver Mining Company, familiar with the fact that during the year 1899, pursuant to an arrangement previously entered into, the Minnesota Iron Company interests had an understanding with the Oliver Iron Company interests or the Carnegie interests, or either of them, whereby it was to pay, directly or indirectly, a rebate of approximately 40 cents a ton on ores

shipped over the Duluth & Iron Range Railroad, under an agreement or understanding whereby the Oliver interests or the Carnegie interests were to ship over the Duluth & Iron Range Railroad at least 500,000 tons of ore per annum."

THE WITNESS: The only agreement I can recall was that of 1900, whereby they were to get a rebate on the tonnage dating from the first of 1900.

By MR. DICKINSON:

Q. What do you understand this to refer to, Mr. Gayley, where you stated——

MR. SEVERANCE: I object, now, to reading anything more from the minutes by way of cross examination of counsel's own witness, in addition to the objection heretofore made as to reading from the minutes.

THE WITNESS: What is the question?

By MR. DICKINSON:

Q. The question is: referring to this statement, attributed to you, as follows: "We have had an arrangement with railroad for some time to carry Ore at a rate of 60 cents, paying currently, however, one dollar per ton, but we have not been able to collect our money for the reason that there was no fixed method of payment and railroad feared rebating." To what did that refer?

A. I presume that refers to the year 1899.

Q. And to an arrangement that was existing then?

A. To an arrangement that was existing; but I do not think it could have been entered into in the form of a contract, as was proposed for the year 1900.

Q. You mean by "contract" a written contract?

A. Yes.

Q. Do you mean by that to say—

A. (Interposing) An agreement.

Q. Do you mean by that to say that it was not a formal agreement, a written agreement?

A. I do not recall any written agreement.

Q. I will ask you whether or not, in referring to this, you referred to some agreement, whether written or not?

A. Yes; precisely.

Q. And that such an agreement as that was and had been in effect?

MR. SEVERANCE: He has not said that.

THE WITNESS: According to these minutes they were not able to pay us the amount due us from last year—according to what they said.

Q. Under an agreement that was existing?

A. That is the way it appears.

MR. SEVERANCE: Just one moment. This is hardly fair unless Mr. Gayley understands, and I want to know whether he is saying that that is what appears by the minutes, or whether he is stating that that is what he remembers.

MR. DICKINSON: I understand him to say that it appears from the minutes.

MR. SEVERANCE: You do not testify that you have any recollection of this thing?

THE WITNESS: I have no recollection.

MR. SEVERANCE: Very well. That is all right.

By MR. DICKINSON:

Q. I want to ask you this: Was it the habit of the Carnegie Company to record faithfully what transpired at its meetings?

A. Evidently, from these minutes.

Q. From your knowledge of the meetings and what occurred, and from the minutes that were made and the records that were made, just state whether or not you have any reason to doubt the truth of that statement.

MR. SEVERANCE: I object to that as incompetent, irrelevant and immaterial.

THE WITNESS: They tried to get everything of substantial value down on the minutes, and evidently they got it there.

By MR. DICKINSON:

Q. Who was Mr. H. H. Porter?

A. He was at the head of the Minnesota Iron Company and the Illinois Steel Company at that time.

Q. Was he connected with the Federal Steel Company afterward?

A. Oh, yes. He was a very prominent man in the Federal Steel Company.

Q. State whether or not the fee of the Pioneer Mines was owned by parties other than those connected with the Minnesota Iron Company.

A. Oh, yes. I do not know of any of the Minnesota Iron Company being interested in the fee, of my personal knowledge.

Q. Either the fee or the lease?

A. Either the fee or the lease.

Q. State, Mr. Gayley, whether or not, during the year 1899, the Carnegie Company had in that section any properties from which it could have mined, during that period, as much as 500,000 tons of ore other than from the Pioneer mines.

A. It had adjoining the Zenith, the Sibley and the Savoy, an extension to the east of the Pioneer; but those mines were, at that time, while containing large bodies of ore, not sufficiently developed to have produced half a million tons.

Q. Could the Carnegie have produced half a million tons there without producing it partly from the Pioneer Mine?

A. Not just at that time. The mines were not fully developed.

Q. When, to the best of your recollection, were the transactions relating to the acquisition of the Pioneer Mine by the Oliver Mining Company consummated?

A. That was in 1898 or 1899.

Q. Where is the Sibley Mine?

A. The Pioneer is on the west of this group, the Zenith is adjoining, the Sibley is the next and the Savoy is the last.

Q. All running west, in the order you have named?

A. It is an extension to the east.

Q. To the east?

A. Towards the east, yes.

Q. They are all on the Vermillion Range?

A. Yes; it is an extension of that Vermillion Range.

Q. Did the Oliver Iron Mining Company acquire the Sibley Mine?

A. They acquired all those mines. They controlled the whole group of mines by lease.

Q. When did it acquire the Sibley Mine?

A. They were all acquired at about the same time; that is, after the Pioneer was acquired; then, as I recollect, they started in to acquire the further extensions on the same ore trend.

Q. The Pioneer was acquired first, and then the others after that, within a short period?

A. Yes.

Q. State whether or not the Oliver Mining Company had acquired any of the mines in that section prior to July 19, 1898.

A. No; I don't think they had.

STIPULATION.

MR. DICKINSON: It is stipulated in this cause by counsel for the Government and by Messrs. Lindabury, Depue & Faulks for the defendants represented by them, that H. C. Frick became the owner of certain shares of stock in the Cambria Steel Company in the amounts and upon the dates as follows:

April 4, 1906	20,000 shares
April 6, 1906	9,400 shares
September 4, 1906	5,000 shares
August 20, 1907	2,700 shares

and that he continued to be and is now the owner of said shares, aggregating 37,700 out of a total capitalization of 900,000 shares, of a par value of $50 each.

MR. BOLLING: The defendants object to the introduction of this evidence as incompetent and irrelevant.

MR. DICKINSON: It is also stipulated between the same parties that H. C. Frick became the owner of 2,500 shares of preferred stock in the American Can Company on January 1, 1905; that he sold 1,000 shares April 7, 1905, 200 shares April 26, 1905, and 1,300 shares November 12, 1908; and that since that time he has owned no shares of stock in said company.

MR. BOLLING: The defendants object to the introduction of this evidence as incompetent and irrelevant.

(Whereupon, an adjournment was taken until tomorrow, Tuesday, March 11, 1913, at 10:30 o'clock a. m.)

FORTY-NINTH DAY

EMPIRE BUILDING,
71 BROADWAY, NEW YORK CITY,
TUESDAY, MARCH 11, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON, and MR. COLTON.

Present on behalf of the defendants, MR. SEVERANCE, MR. BOLLING, MR. REED, MR. KELLOGG and MR. CUTHELL.

JAMES GAYLEY

the witness under examination when the adjournment was taken, resumed the stand.

RE-DIRECT EXAMINATION (Continued)

By MR. DICKINSON:

Q. Mr. Gayley, state whether or not the Norrie ore was a rich ore, compared with other ores in the Gogebic and Mesabi Ranges.

A. The Norrie ore on the Gogebic Range was about the same character as the soft hematities on that range.

Q. Was it a rich ore or a lean ore?

A. It was a rich ore.

Q. How about the Tilden ore?

A. The Tilden ore was a very little bit leaner than the Norrie.

Q. How did they compare with the better class ores generally on the Gogebic Range?

A. They were the better class on the Gogebic Range.

Q. How did the Pioneer ore compare in value—I mean from the point of richness—with the Tilden ore?

A. It was richer.

Q. And how did it compare with the Norrie?

A. It was richer.

MR. SEVERANCE: The Pioneer was richer than the Norrie?

THE WITNESS: Yes.

By MR. DICKINSON:

Q. Can you give an estimate as to what percentage it was richer?

A. As I recollect, between two and three per cent.

Q. Than either of them?

A. Than either of them.

Q. State whether or not the ore holdings of the Lake Superior Consolidated Iron Mines exceeded, excluding the holdings of the Minnesota Iron Company and the Oliver Iron Mining Company, the total holdings of all the other subsidiaries of the United States Steel Corporation acquired before January 1, 1902.

A. I believe they did.

Q. State whether or not the Minnesota Iron Company, excluding the holdings of the Lake Superior Consolidated Iron Mines and those of the Oliver Iron Mining Company, exceeded in tonnage the total holdings of all the other subsidiaries of the United States Steel Corporation acquired before January 1, 1902.

A. I believe they did.

Q. State whether or not the holdings of the Oliver Mining Company exceeded, excluding the holdings of the Lake Superior Consolidated Iron Mines, and those of the Minnesota Iron Company, in tonnage, the total holdings of all the other subsidiaries of the United States Steel Corporation acquired before January 1, 1902.

A. That brings up another point, as to whether you wish to include in the Lake Superior Consolidated Mines the ores sublet to the Oliver Mining Company.

MR. SEVERANCE: Which way did you construe that when you answered a few minutes ago, Mr. Gayley?

THE WITNESS: I construed that that it was taking all the ore properties that the Consolidated Mines controlled, even counting the Oliver.

By MR. DICKINSON:

Q. But I asked you to exclude the holdings of the Minnesota Iron Company and the Oliver.

A. I reckoned in that what the Oliver had, independent of its subleasing from the Consolidated.

Q. Take the holdings of the Oliver Mining Company, independent of its subleasing from the Lake Superior Consolidated Iron Mines, and state whether or not, excluding those and the holdings of the Minnesota Iron Company, the Oliver Mining Company's holdings exceeded in tonnage the total holdings of all the other subsidiaries of the United States Steel Corporation acquired before January 1, 1902.

MR. SEVERANCE: You mean, excluding from the Oliver holdings that which they sublet from the Minnesota?

MR. DICKINSON: Yes.

THE WITNESS: I do not think they had, with that exclusion.

By MR. DICKINSON:

Q. State whether or not the ore holdings of the Lake Superior Consolidated Iron Mines, including what it had leased to the Oliver, exceeded in tonnage the total holdings of all the other subsidiaries of the United States Steel Corporation acquired before January 1, 1902, excluding the holdings of the Minnesota Iron Company and of the Oliver Mining Company.

A. I believe that to be true.

Q. How much larger were the ore holdings of the Lake Superior Consolidated Iron Mines, defined as I have defined them in the last question, than the total holdings of all the other subsidiaries acquired by the Steel Corporation before January 1, 1902, excluding from consideration those of the Minnesota Iron Company and the Oliver Mining Company?

MR. SEVERANCE: Do you mean to give the tonnages? Is that what your question means?

MR. DICKINSON: I am not asking the amount of tonnages, but I want to draw an estimate——

MR. SEVERANCE: The witness must know it, in order to give an answer.

MR. DICKINSON: I will frame my question differently.

By Mr. Dickinson:

Q. State whether or not the ore holdings of the Lake Superior Consolidated Iron Mines, defined as I have defined them in the last question, were more than twice as large as the total holdings of all the other subsidiaries acquired by the Steel Corporation before January 1, 1902, excluding from consideration those of the Minnesota Iron Company and the Oliver Mining Company.

A. I believe they were.

Q. What would you say if, instead of two, I substitute three?

A. I do not know.

Q. Answer the same question in regard to the holdings of the Minnesota Iron Company, excluding from consideration those of the Lake Superior Consolidated Iron Mines and the Oliver Mining Company, as to whether or not they were more than twice as large.

Mr. Severance: If I understand this question, it is as to whether the Minnesota Iron Company's holdings were twice as large as the holdings of all the other subsidiaries, exclusive of the Lake Superior Consolidated Iron Mines and the Oliver Mining Company?

Mr. Dickinson: Yes; acquired before January 1, 1902.

The Witness: I believe they were.

By Mr. Dickinson:

Q. Mr. Gayley, I show you Government Exhibit No. 397, a letter from T. F. Cole, February 26, 1907, to you; also a letter from you to Mr. Corey, of March 6, 1907, Government Exhibit No. 398, and ask you to look them over. (Handing papers to the witness.)

A. Yes.

Q. Mr. Gayley, state whether or not the estimates therein set forth, according to your information, were correct, approximately, as of that time, and based upon information that could be gotten at that time.

A. I believe them to be correct. This statement shows that there would be 159,000,000 tons of ore obtainable from the Hill lands, of which 30,000,000 tons would be Bessemer.

Q. And you think that would be correct?

A. That was correct. I further state, in my letter to

Mr. Corey, that there are probably about 70,000,000 tons to be added to the above estimate. That does not include or describe what the 70,000,000 tons were, as to whether it was to be the washable low grade ore or standard ore.

Q. Was that, or more than that, added within the time that you were with the corporation? Please state the facts about that.

A. As I recollect, there were probably 100,000,000 tons added. The estimate in round numbers that we had in mind in taking the Hill lease was 150,000,000 tons, with the expectation of further developments on the property probably showing more ore. That was an indefinite proposition.

MR. SEVERANCE: May I ask if you will be kind enough to put this question, so that I will not have to go back to it? Ask him whether that 150,000,000 was net, or was that included in a lot of ore that had to be washed and concentrated, so that it would take two tons to make one ton? Ask that, so as to clear it up.

MR. DICKINSON: What was the average analysis of that ore?

MR. SEVERANCE: That is not the question.

MR. DICKINSON: I am coming to that.

THE WITNESS: The average on the 150,000,000 tons, as stated, was 56.60 per cent iron.

By MR. DICKINSON:

Q. Was that correct, according to the best of your knowledge and belief?

A. It evidently was at that time.

Q. When you spoke of that 150,000,000 of tons of ore, state what kind of ore it was.

A. The average analysis was 56.60.

Q. Did it take two tons of that to make a ton of iron, in that grade?

A. Not of that grade; that is of the washable ore—

Q. Was it the washable ore that you contemplated being added, or not?

A. I presume both.

Q. Up to the time that you left state whether or not approximately a tonnage of about 250,000,000 tons altogether

had been developed on the Hill property, and whether or not about 30,000,000 tons of that was Bessemer.

A. My recollection is that the total tonnage of ore in the ground, washable and non-washable ore, was about 250,000,000 tons, in round numbers.

Q. What was the metallic content of that washable ore?

A. About 47 per cent.

Q. And when washed, what was it?

A. Well, it would run up to 60 or 61 per cent.

Q. How much of the washable ore did it take to make a ton of the 60 per cent ore that you have described?

A. My recollection is that their average practice was one and a half to two tons, depending on the varying richness of the ore.

Q. I will ask you to look over the minutes of a meeting of the Executive Committee of the United States Steel Corporation, Government Exhibits, Volume II, page 581, at which meeting you are recorded as being present.

MR. SEVERANCE: I object to refreshing the recollection of the witness in this manner, and I object to any questions founded upon such minutes upon the same grounds as contained in objections made heretofore in similar cases.

THE WITNESS: Yes.

By MR. DICKINSON:

Q. I will ask you whether or not at that time you knew of any other block of ore property in the Northwest, outside of the Whiteside Forty, and the property of Mr. Hill?

A. Yes, I did.

Q. Explain if you please, what is meant by this statement which appears there.

"Mr. Gayley stated that the option expires January 15th; that it adjoins the property owned by Mr. Hill and contains about seven million tons; that he does not know of any other block of ore property in the Northwest outside of this and the property of Mr. Hill; that they all report if any new ore is found they are satisfied it will be some isolated spots on the Missabe Range east of the line of St. Louis and Itasca Counties, and that every Forty has been drilled."

THE WITNESS: That refers to standard high grade Mesabi

ores. The Chemung property and the Canisteo property are lower grade ores, and quite a large tonnage was developed upon them. Speaking in this connection of what we considered available ore properties at that time, it was standard, high grade Mesabi ore.

By Mr. Dickinson:

Q. Referring then to properties that you considered available at that time, standard high grade Mesabi ore, state whether or not at that time you knew of any other block of ore property of that character in the Northwest, outside of the property referred to in that letter, and the property of Mr. Hill.

A. Personally I did not.

Q. I am only asking what you knew personally.

A. Personally I did not, and that represented the best of our knowledge at that time. There were others that were brought out after that.

Q. You were asked whether you remembered the question of keeping up the price of ore. The following question was put to you by Mr. Severance, at pages 6589 and 90:

"Q. Do you remember this question coming up before the Executive Committee of the Steel Corporation, after it was organized; that is, the question of making purchases of pig iron for the effect it might have upon the prices of steel products? And that Judge Gary, in that meeting, disapproved of such buying, and that, as a matter of fact, it was decided to buy only such pig iron as might be needed?"

You answered:

"I remember that matter being discussed at a meeting of the executive committee of the Steel Corporation."

Now, what date do you recall as the date of the meeting to which you refer in that answer?

A. I cannot recall.

Q. Do you remember the year?

A. It must have been 1902 or 1903, as far as I recall now.

Q. Do you remember the month?

A. No, sir.

Q. I call your attention to Government Exhibits Volume III, page 972, a meeting of the executive committee, Tuesday, May 12, 1903, at which Mr. E. H. Gary, Chairman, and you,

are recorded as being present from which I will read the following:

"PURCHASES OF PIG IRON.

"In regard to the proposition to purchase pig iron for the third quarter of this year, the President stated in substance: That he believes we ought to purchase 75,000 to 100,000 tons at the best price we can; that this would be advantageous at present prices because of the large amount of finished material we sell at prices dependent upon the price of pig iron; and therefore we ought not to endeavor to put down the price of the iron; that the proposed purchase would not be at all speculative because we have sold the steel to be made from it.

"The Chairman: It seems to me $18. is a good big price. I am very well satisfied to have the market sustained. I agree with you that we are interested in having pig iron maintained, but I think we ought to be satisfied with $18.

"Mr. Gayley: I would rather buy it at $19.

"The President: I would favor $19. or $18.50.

"Upon motion, duly seconded, the matter was referred to the Finance Committee."

I will ask you if that was the meeting that you had in mind.

A. It was.

Q. At which you referred to Judge Gary and his attitude in regard to the purchase of pig iron?

A. That is my recollection of what transpired.

Q. State whether or not the Carnegie Company or the Oliver Iron Mining Company acquired any properties on the Vermilion Range from the Minnesota Iron Company.

A. I do not know of their acquiring any ore mines from the Minnesota Iron ompany.

Q. By lease or—

A. I do not recall.

Q. You were asked about shipments in 1900 from Tower and Ely. I will ask you whether or not in 1900 there were any other shippers of ore from any other section from Minnesota over the Duluth & Iron Range Railroad which in the market came into competition with the ores that were shipped from Tower and Ely.

MR. SEVERANCE: You mean any other old range ores?

(At the request of Mr. Dickinson, the stenographer repeated the question.)

THE WITNESS: There were shipments over the Iron Range Road from the Mesabi Range.

By MR. DICKINSON:

Q. And did these come in competition with the ores shipped from Tower and Ely?

MR. SEVERANCE: That is objected to as immaterial.

THE WITNESS: I do not quite understand the scope of that question. They were a different character of ores, and the ores from the Vermilion Range are sold at a higher price in the market, even on the same analysis.

By MR. DICKINSON:

Q. Were they sold in the market to makers of steel generally in commerce?

A. The ores from Ely went to the Oliver Mining Company, and were not sold in the market.

Q. But they were made into steel, which was sold?

A. They were made into steel by the Carnegie Company.

Q. Were any other ores shipped over that railroad from any other section, other than that about Tower and Ely, which were sold in the market and made into steel, or which were made into steel by the owners who shipped them?

A. The Oliver Mining Company shipped some ore from its Virginia mines over that road. There was ore that went from the Fayal mines, owned by the Minnesota Company, to the Illinois Steel Company over that road.

Q. Were there any manufacturers of steel or were there any merchant dealers in iron ore that shipped over the Duluth & Iron Range Railroad from points other than Tower and Ely?

A. Yes; Pickands, Mather & Company, merchants in iron ore, shipped over that road.

Q. Did they ship in large amounts?

A. Compared with Mesabi operations, they were not large.

Q. About what tonnage did they ship a year?

A. A few hundred thousand tons, I presume.

Q. Did that go into the manufacture of iron and iron products?

A. I don't know. They owned blast furnaces themselves. Whether they sold that ore, or whether they used it themselves, I do not know.

Q. If they used it, what did they use it for?

A. Making Bessemer iron, basic iron, malleable iron.

Q. And the products from those irons? Or did they sell the iron?

A. They did not convert it into steel.

Q. Was it sold by them to concerns that did convert it into steel?

A. It had to be sold by them. They were not manufacturers of steel.

Q. Then I will ask you this question, whether or not, in 1900, there were shipped over the Duluth & Iron Range Railroad iron ores from Minnesota, which, directly or indirectly, went into the market for the manufacture of steel, from points other than Tower and Ely.

A. I have already stated that the Fayal mine ore went to the Illinois Steel Company.

Q. You did not mention the Illinois Steel Company?

A. Yes; I beg your pardon, I did.

Q. Are those all you can mention—the Illinois Steel Company and Pickands, Mather & Company?

A. Where the Minnesota Iron Company might have distributed some of that ore in the market, or where Pickands, Mather & Company disposed of their ore, I do not know.

Q. State whether or not all the ore holdings from which ores were shipped over the Duluth & Iron Range Railroad were controlled by the Minnesota Iron Company, Pickands, Mather & Company and the Illinois Steel Company, or whether there were any other owners of ore in that region during that year that shipped.

A. The Oliver Iron Mining Company. They shipped some from Virginia over the Iron Range Railroad.

Q. Were there any others besides the Oliver Iron Mining Company—

A. What date is this to which you are referring?

Q. 1900.

A. I do not recall, now, that there were.

Q. Were there any ore properties there contiguous to that railroad that were owned or controlled by any corporation or people that you know of, other than those named?

A. The Oliver Iron Mining Company had—

Q. (Interposing.) But you mentioned the Oliver Iron Mining Company.

A. I thought you left that out.

Q. Can you mention any others except the Illinois, the Oliver Iron Mining Company and the Minnesota?

A. I can not recall, now, as to the ownership of smaller properties and individual holdings.

Q. State whether or not the charges for carrying ore from the Mesabi region over the several railroads that carried ore to the Lake ports were the same per ton, regardless of the cost of mining and of the metallic content of the ore shipped.

A. They were.

Q. State whether or not the ores from the Gogebic and the Marquette regions competed in the market with the ores from the Mesabi region.

MR. SEVERANCE: What do you mean by "competed in the market?"

MR. DICKINSON: I mean whether they were sold in the same market and used for the same purposes.

THE WITNESS: I do not understand the meaning and effect of "competition" in that sense. The old range ores were more desirable material for blast furnaces, and they always could be sold; and after the iron makers had supplied themselves with old range ores to the extent that they could, then they purchased of the Mesabi ores, because they were less desirable for the manufacture of iron.

By MR. DICKINSON:

Q. Were they sold and used for the same general purposes?

A. They were sold for making pig iron to be converted sometimes into steel and sometimes into malleable metal.

Q. That is, the ores from both regions?

A. The ores from both regions.

Q. The Minnesota and the old ranges?

A. The Minnesota and the old ranges.

Q. I will ask you whether or not your attitude, while you were representing the ore interests of the Carnegie Company and of the United States Steel Corporation, was uniformly to the effect that you would buy every pound of ore and every piece of ore property you could get in the Northwest.

A. No, I would buy any piece of ore property of desirable quality.

Q. Well, with that modification, state whether that was always your attitude.

A. I believe that that was my general attitude, both for the Carnegie Company and the Steel Corporation.

Q. State whether or not the total imports of ore in any given year, from 1890, to 1911, inclusive, have exceeded 2,600,000 tons.

A. I do not know.

Q. State whether or not in any year between the dates named imports in the United States for steel making purposes exceeded five per cent of the total amount of iron ore produced and consumed in the United States for steel making purposes.

MR. SEVERANCE: I object to that as leading, irrelevant and immaterial.

THE WITNESS: I do not know. I do know it has been on a material increase every year, with the Pennsylvania and Maryland companies, and likewise the Bethlehem. The ores are available if they want to use them.

By MR. DICKINSON:

Q. State whether or not the percentage of foreign ore imported into the United States in 1911 was smaller than that imported in the year 1910.

A. I do not know.

MR. SEVERANCE: Gentlemen, you have these tables all in evidence; they are government tables. Why take up time fussing around this way?

MR. DICKINSON: Referring now to the latter part of the

year 1900, I will ask you whether or not you were abroad at any period during that time; when you went abroad and when you returned.

THE WITNESS: I went abroad in December.

By MR. DICKINSON:

Q. How long did you stay abroad?

A. I returned some time in January, the latter part of January.

Q. Do you remember what time you went abroad in December?

A. No, I do not; about the middle of the month, I think.

Q. State whether or not Wisconsin produced as much as two and a half per cent of the ore used in the United States for steel making purposes in the year 1910, or any year preceding that back to and including 1901.

A. I do not know; I do not carry those statistics in my head.

MR. SEVERANCE: I suggest to counsel that he has all those exhibits in evidence. They are in front of him. It is quite useless to keep this gentleman on the stand asking these questions. Of course he cannot tell from recollection.

By MR. DICKINSON:

Q. What mines were operated in Wisconsin, if you know, during those years?

MR. SEVERANCE: Objected to as not redirect examination.

THE WITNESS: There were some small mines. What years?

By MR. DICKINSON:

Q. 1901 to 1910.

A. There were some mines opposite or across the river from Ironwood, where the Norrie Mines were. The range extended over into Wisconsin; and then there were mining operations down in the Iron Ridge District of Wisconsin, which were practically used by the Northwestern Iron Company in the Mayville District; and likewise there was ore shipped during that period to the Wisconsin Steel Company and Rogers, Brown & Company, from the Baraboo District.

Q. When was that district first developed?

A. Which one?

Q. The Baraboo?

A. I do not know exactly; 1905 or 1906, along there.

Q. 1905 or 1906?

A. According to my best recollection.

Q. Who was Mr. Dinkey, that was connected with the Carnegie Company?

A. There were two of them.

Q. Who were they?

A. A. C. Dinkey is now president.

Q. Was he a director of the Carnegie Company before it was taken over by the Steel Corporation?

A. No.

Q. What position did he hold with that company?

A. Mr. Corey, at the time it was taken over, was general manager of the Homestead Steel Works. Mr. Dinkey was then his assistant. When Mr. Corey became president of the Carnegie Steel Company, Mr. Dinkey in turn became general manager of the Homestead Steel Works.

Q. When was that?

A. When Mr. Corey became president.

Q. Will you give me the date?

A. In 1901 Mr. Corey came here. Mr. Corey became president of the Steel Corporation in 1903, and Mr. Dinkey became president of the Carnegie Steel Company at that time.

Q. When did Mr. Dinkey become general manager of the Homestead Steel Works?

A. In 1901, the time of the formation of the Steel Corporation, when Mr. Corey became President of the Carnegie Company.

Q. Who was the other Dinkey you referred to; what was his position?

A. He is a brother. He is now the superintendent of the Edgar Thomson Steel Works.

Q. Was he a director of the Carnegie Company at any time?

A. Not that I know of, unless he has been made one since I left the corporation, but I have no knowledge on that.

MR. DICKINSON: We are through with Mr. Gayley except that when we get the estimates that we have called for that

were referred to the other day if it is necessary to recall him we will want to do so.

MR. SEVERANCE: It is not ncessary to give us any notice.

RE-CROSS EXAMINATION

By MR. SEVERANCE:

Q. Mr. Gayley, your attention has been called to certain minutes of the Carnegie Steel Company for the purpose apparently of disproving your recollection as to the abandonment for a time of the building of tube works. I call your attention to a cablegram from Mr. Carnegie—

MR. DICKINSON: Has that been introduced in evidence?

MR. SEVERANCE: It has not. You failed to do it, intentionally.

MR. DICKINSON: I object to the defendants introducing in evidence any of their minutes, as incompetent, irrelevant and as self-serving statements.

By MR. SEVERANCE:

Q. I call your attention to a cablegram from Mr. Carnegie, dated Clashmore, July 30, 1900, addressed to Mr. Schwab, the president of the Carnegie Steel Company, read at a meeting of the board of directors held on July 31, 1900, at which it appears by the minutes you were present, and will ask you whether you have any recollection of the reading of this cablegram in your presence.

MR. DICKINSON: This is objected to as irrelevant and incompetent.

By MR. SEVERANCE:

Q. (Reading) "Come sure. Wish conference. Am anxious. Glad improvement postponed. Absolutely necessary you should hold every dollar. You have not answered point of greatest importance. Delay delivery bonds in payment of interest if not done. Consider actually dangerous position. Only fair improvements begun before reorganization should be paid. Delay delivery of bonds makes us perfectly secure. Are not liable until coupon presented. Owners will thoroughly approve of action, which may prove preservation of property during panic. We may be in great need of reserve millions. Please answer."

Do you recall a cable the substance of that being read at a meeting?

A. I can not recall definitely that particular cable. I do know that Mr. Carnegie on one occasion, by communications to the board of the Carnegie Steel Company, opposed going ahead with those improvements.

MR. DICKINSON: I object to that as not responsive to the question.

By MR. SEVERANCE:

Q. You still remember that Mr. Carnegie disapproved of going ahead with the improvements, after having in the first place been favorable to the same?

A. Yes; on more than one occasion he did.

Q. Do you recall a discussion at a meeting on October 16, 1900, of the board of directors of the Carnegie Steel Company, at which you appear by the minutes to have been present, of the question of experiments in tube making. Do you remember along about that time that a discussion was had or a statement made by Mr. Schwab, relative to experiments in seamless tubes?

MR. DICKINSON: This is objected to as irrelevant and incompetent. Counsel has before him the original minutes of the Carnegie Company, and is reading what has not been introduced in evidence, and I object to his referring to it in this way to question the witness.

By MR. SEVERANCE:

Q. For the purpose of refreshing your recollection in that regard I will read to you the statement appearing on pages 19 and 20 of the original minutes of the Carnegie Steel Company for October 16, 1900, being pages 280 and 281 of the said minute book, and I will state, in connection with this reading, that counsel for the petitioner have introduced in evidence selections from the same minute book, both preceding and succeeding the meeting in question.

MR. COLTON: Do you not think, Mr. Sevreance, that you should state at the same time that that was done with the understanding that if you wished to introduce other excerpts from those minutes it could be done?

MR. SEVERANCE: Yes; that is fair.

MR. COLTON: So that there is nothing out of the way in it.

MR. SEVERANCE: No; I am not suggesting that there was.

MR. DICKINSON: This is objected to because counsel is calling the attention of the witness to matters and making a statement in regard to the contents of minutes that have not been introduced in evidence.

By MR. SEVERANCE:

Q. (Continuing) Which said excerpt from the minutes that I am about to read I will have identified as Defendants' Exhibit No. 31, and offer it in evidence as part of the examination of this witness.

Counsel for the government suggests that I state the names of the parties present at the meeting. It appears by the minutes, at page 262 of the minute book, that there were present Messrs. Schwab, President, Phipps, Morrison, Gayley, Clemson and Blackburn; also Messrs. Corey, Dixon and Bope. Mr. Peacock in Detroit. Mr. Lauder and Mr. Singer abroad.

I will read to you this Exhibit No. 31 as follows, and ask you if you recall this discussion:

"EXPERIMENTS IN TUBE MAKING.

"MR. SCHWAB: When I was in Scotland I talked with Mr. Carnegie, Mr. Lauder and others, in reference to proceeding with our improvements, and at some length discussed the question of tubes. I have had in view for some time a plan for making a seamless tube, which can be sold as against a welded tube. The matter is largely an experimental one, and I am not yet prepared to make a recommendation. I have, however, seen Mr. Miller, of the Shelby Steel Tube Company, and have gone over the plans with him, and he is willing to equip a mill, using such parts as he has, which will enable us to roll tubes according to my plan. It seems to me, before going into an expenditure of such magnitude as tubes require, we must have some more definite information. Mr. Miller reports it will cost $40,000 to put in the machinery necessary for this experiment. He is willing to make the experiments if we will stand one-half the expense.

"We have everything to gain, because if successful, we will go ahead with our plans.

"I would like to have the authority of the board for, and

would strongly recommend, the making of such an arrangement with the Shelby Company.

"The board should understand this company does not make the class of tubes we are considering. This expenditure means the addition of a finishing mill, which would take the tube from the point where they start to draw it.

"MR. GAYLEY: Where does this benefit Mr. Miller?

"MR. SCHWAB: He has been working on the idea of combining his tube works with ours when we build it. I have not recommended this, but have not told him we would not do this.

"After a little further discussion as to the details of the plan, it was moved by Mr. Phipps, seconded by Mr. Morrison, that the President be authorized to expend the sum of $20,000, in connection with a like expenditure on the part of the Shelby Tube Company, in experimenting on the manufacture of seamless tubes.

"The motion was carried, the vote being unanimous."

(The extract was thereupon marked "Defendant's Exhibit No. 31, March 11, 1913.")

By MR. SEVERANCE:

Q. Do you recall that meeting and that action being taken?

A. I can not recall definitely any time, but I do know that the matter was discussed of making seamless tubes, and of entering into some arrangement with the Shelby Company for that purpose.

Q. You were asked by counsel a few moments ago whether all of the available high grade ore with which you are familiar, in January, 1903, was contained in the so-called Whiteside forty. I think you stated that you did not know of any other block of that character.

For the purpose of refreshing your recollection I call your attention to the minutes in Volume II of the Government Exhibits, page 583, being the minutes of the meeting of March 24, 1903, which was between two and three months after the meeting of January 6th, in which you are quoted as stating "That there is now an opportunity to secure an option on the ore property known as the Kosmerl, lying between the Whiteside and the Wanless properties," and that it seems to be the deep part of the basin of ore of these three prop-

erties, and that "our people believe the property will show at least 5,000,000 tons of ore"—I am not reading it exactly word for word. It further states that the ore averages 59 per cent iron, and that inasmuch as we now control the Wanless property on the west, both properties could be worked as a unit with a single installation of hoisting and power plant, etc.

Do you remember about that?

A. I know the Corporation got this property.

Q. Do you not think you knew of that property at the time, January 6th, when Whiteside was under discussion?

A. I do not think there is any doubt but what we knew of it at that time. That was undoubtedly in our minds, because the negotiations were generally conducted over a considerable period of time; and I observe also that this adjoins the Whiteside property; and very often when we spoke of ore bodies, we did not speak of ownership but of the basin of ore, irrespective of ownership.

Q. So that it is possible that that reference in the discussion to the Whiteside may have referred to that whole deposit?

A. To that basin of ore.

Q. Counsel read to you a short time ago from page 972 of Volume III, a meeting of the Executive Committee of May 12, 1903, some statements with reference to the purchase of pig iron, and asked you if that was the meeting you had in mind at which Judge Gary had taken the position that you detailed on your cross-examination the other day.

A. Yes, sir.

Q. I call your attention now to another meeting immediately preceding that, of May 5, which appears at pages 970 and 971, of Government Exhibits, Volume III, which counsel overlooked, apparently, in calling your attention to the other meeting, because it treats of the same matter. At that meeting there seem to have been present Messrs. Gary (Chairman), Perkins, Schwab, Converse, Edenborn, Reid and yourself. Mr. Schwab was then president?

A. Yes, sir.

Q. I will ask you if you recall this, which appears in the record of that meeting (Reading):

"The President stated that he would like to obtain the views of the Committee in regard to the advisability of the purchase of about 30,000 tons of pig iron at $18.50 for the third quarter of 1903, and for which we would exchange coke at the rate of $3 per ton; that we will require about 100,000 tons in that quarter; that he believes we ought always to be buyers of some pig iron; that it would be better even to shut down some of our high-priced furnaces and be purchasers, that the price of finished steel products being regulated by the price of pig iron, we ought not to be endeavoring to get the cheapest iron; that we ought to maintain the price by little purchases; that $1 a ton is such a little thing compared with the advantages we receive in the finished products; that if we had purchased pig iron there would not have been the present downward tendency in it."

Judge Gary was Chairman?

A. Yes.

Q. (Continuing): "The Chairman: I would not be in favor of making the purchase. The price for our coke should be $3.50. We have bookings enough now to justify us in the purchase of 30,000 tons for those months, but can we spare the coke? I do not think we ought to buy pig iron at prices considerably higher than the price will be when we need the iron. I would hope that the business conditions are such that next July and August we have to buy pig iron at $18.50 or $19 a ton, but I do not think it is necessary to buy it now. The price advanced from $16 to $21 because of its scarcity, but the price of finished steel did not advance. I would like to see pig iron sift down to about $16.50 and stay there.

"Mr. Gayley: The first contract made for coke was at $3.50. The Inter-Company price is $2.60 plus. I think we ought to hold the price of pig iron at $18.50 and that it is important for us to stay in the market and buy at $18.50; and rather than miss the deal I would recommend the exchange on the basis of $3 a ton for coke.

"Upon motion, duly seconded, it was voted that the matter be placed in the hands of the President to act."

At the next meeting the matter came up as stated by Judge Dickinson in a question to you a short time ago. Now I ask you whether you recall that statement being made by

Judge Gary at the preceding meeting, as well as the statement he made on the 12th of May, the time Judge Dickinson's question refers to?

A. I know we had several discussions as to the advisability of purchasing iron, and I know very well that the attitude of both Mr. Schwab and myself was for the purchase of iron, and Judge Gary was not in favor of it; and as I recall it he assented to it on the basis of $18, which I do not think either Mr. Schwab or I approved, as it was too low.

Q. You know, as the result, do you not, that you bought only such iron as you needed to use?

A. Such iron as we needed to use, and did not shut down any furnaces to buy iron.

Q. In your re-direct examination yesterday, at page 6711, you testified as follows:

"Q. You testified this morning in regard to a corporation having a great variety of ores, some being of a lower grade, and the capability that such a corporation had to utilize the lower grade ores by reason of having, at the same time, the higher grade ores, to mix with them, thus utilizing the lower grade ores. State whether or not a concern or corporation or company in the same territory having only the lower grade ores to which you have referred, and not the higher grade and richer ores to mix with them, could compete on the same basis with a company which had and could mix and market both grades, as you have described.

"A. It stands to reason that a manufacturing corporation using a lean ore cannot compete under the same cost of mining with a corporation that mines a rich ore; but I know of no such conditions as are described in the question."

What did you mean by saying that a manufacturing corporation using a lean ore cannot compete, under the same cost of mining, with a corporation that mines a rich ore?

A. Could not compete as profitably.

Q. You did not mean that the difference would be such as to put one out of business?

A. No. That is, the one using the lean ore and making the cost of its pig iron increase through that leanness would be subject to disadvantage.

Q. Subject to that amount of handicap?

A. Certainly.

Q. That was all you meant by that answer with reference to the inability to compete?

A. Precisely; that is the fact of the situation.

Q. You were asked yesterday by counsel for the Government, at pages 6718 and subsequent pages, relative to shipments or the fact that there were no shipments of ore from Mexico and other places. The ores exist in those places, however, and prevent any monopolization the same as though there were shipments; that is a fact, is it not?

MR. DICKINSON: That is argument. I object to argument being presented to the witness, and a conclusion of that character. It calls in a question of law and a question of unproven facts.

THE WITNESS: It is.

By MR. SEVERANCE:

Q. Mr. Gayley, was the Steel Corporation at one time offered the Witherbee-Sherman ores?

A. They had an option on that through the American Steel & Wire, at the time of the formation of the Steel Corporation.

Q. What was done about buying them? Did it buy them or did it not?

A. It did not, and later the Lackawanna Steel Company came in and bought a third interest.

Q. What are the Antikokan mines or ore deposits?

A. They are large deposits of magnetic ores in Port Arthur, on Lake Superior.

Q. Did you have those under discussion?

A. We had in 1900.

Q. Who took the option? Was that the American Steel and Wire also, or what company was it?

A. The American Steel & Wire Company had an option on those properties when the Steel Corporation was formed, and I made a recommendation to the Executive Committee to purchase the property, but it was not acted on favorably.

Q. That was another one of the cases where your desire to procure ore was not shared in by the committee?

A. The committee did not accept the property.

Q. What is the fact as to whether, between the organiza-

tion of the Steel Corporation and January, 1903, at the time you acted on the Whiteside property, the competitors of the Steel Corporation had been in the market and had been picking up ore properties on the Mesabi Range and other ranges?

MR. DICKINSON: You brought that out on cross examination. I did not refer to it.

MR. SEVERANCE: The Whiteside? Certainly you asked him about that, and you read him the minutes.

MR. DICKINSON: But I did not ask what his competitors got.

MR. SEVERANCE: You asked him as to whether that was not the only property there was left.

MR. DICKINSON: Whether or not he stated it at that time; that is what I asked him.

MR. SEVERANCE: Now I am trying to find out why there were no properties left, if there were none. The competitors of the Corporation had been busy.

MR. DICKINSON: I object to that statement as a question of fact by counsel to the witness, when a question is pending.

THE WITNESS: What is the question?

(The pending question was repeated by the stenographer.)

THE WITNESS: There never was such activity known on the Mesabi Range as in the first two years after the Steel Corporation was formed, toward the acquisition of ore property by other steel companies, independent mining corporations and independent furnace corporations.

By MR. SEVERANCE:

Q. Then, did you mean by that answer to say that during that period a large number of properties had been acquired by the various interests you mention?

A. Those interests took practically everything that there was in the market, or the great proportion of what was in the market. It was a period of greatest activity on the Mesabi Range.

Q. You were asked yesterday by counsel as to whether or not it was physically possible—I think that was the expression, or something to that effect—for more than one railroad to operate in an open pit mine. I call your attention to the exact language, at page 6733. One question was, "If there

are different openings, then would it be practicable for different railroad companies to serve different openings?

"A. I suppose they could, if they had the right territory to make an approach to the mine."

(Continuing) Again, later on in the page, after a long answer, you were asked:

"Q. Do you state or not that it is impossible for any one large mine capable of having various openings to be served by more than one railroad in that section?

"A. Why, certainly it is not impossible.

"Q. Do you state that it is not practicable?

"A. In some cases.

"Q. How?

"A. In some cases.

"Q. In some cases you do?

"A. Yes.

"Q. But generally do you say that in all cases it is not practical?

"A. No; I did not say that. I said in some cases it might not be practical, and in other cases I doubt whether the railroad would care to go to the enormous expense to make it practicable."

Now, addressing your attention, not to situations generally, as those questions were, but to the situation in the Mesabi Range, and bearing in mind that the mines were located as they were, the openings were as they were, that the docks of no two railroads were the same—that is, the Iron Range had its docks at Two Harbors, the Missabe at Duluth, and the Great Northern at Superior—what would you say as to whether or not it was practicable for more than one railroad to serve any of those mines on the Mesabi range?

A. What I meant to state was for instance in regard to what is designated as a stripping proposition, that it may be the same body of ore, but there may be two different operations on that property; that it would be practicable for one railroad to serve one stripping operation and another railroad to serve another, but that two railroads cannot serve the same proposition, the same open cut proposition. I do not consider that any railroad would let another use its tracks into an open pit, and it is certainly true that two railroads could not operate their own tracks in a single pit. I do not believe

that any owner of a mine would want for his convenience to have two different railroads serving an open cut mining proposition, because part of his ore would be taken to one dock and part to another, and there would be difficulty in making grades. It would necessitate the holding of these small amounts of ore that are distributed to the several docks, for a great deal longer time so that a cargo could be made up, and that might interfere and probably would interfere with their obligations to the purchasers of ore at lower lake ports. I cannot imagine a condition where any operator of a mine would want two railroads coming into the same open pit operation.

Q. And as a matter of fact, in the history of that range, there have not been any such instances?

A. There have not.

Q. Either on the part of the Corporation's mines or any independent mines?

A. That is true.

Q. Your attention has been called to a good many minutes of the Carnegie Company, and there seem to be in those minutes quite lengthy discussions. What is the fact as to whether all the discussions that took place at those meetings were recorded in the minutes, meetings at which you were present, I mean?

A. Only a very small part of them. That is, the secretary recorded what he thought was of extraordinary importance, and the meetings covered a wide range of discussion regarding the works and the conduct of the works and mines and railroads, and, off and on, questions of manufacturing, and methods of manufacturing, and the discussions covered a wide field which did not appear in the minutes at all.

Q. And the minutes did not attempt to set forth in full the discussion on any particular question?

A. No, it was supposed to be just a synopsis of what was done, or a summary.

Q. Of what was said?

A. What was done and said.

RE-DIRECT EXAMINATION,

By Mr. Dickinson:

Q. Were not Mr. Carnegie and Mr. Frick frequently abroad at the time these meetings recorded in the minutes took place?

A. Mr. Carnegie was particularly; he was abroad every summer.

Q. For considerable periods of time?

A. Yes.

Q. Were those minutes sent to him for the purpose of showing him what was going on?

A. Yes; in every case they were sent to him, I think.

Q. And were records made of important things in order that he might know what was being done in important matters?

A. To indicate to him what were the important matters.

Q. Was he the controlling spirit at that time?

A. He was the senior partner.

Q. And the largest holder?

A. And the largest holder.

Q. State whether or not the services performed by railroads in Michigan in handling ores and loading and unloading were substantially the same as those performed in the Vermilion and in the Mesabi by the railroads.

A. The burden placed on the railroads in Michigan was not one-half so burdensome as on the Mesabi Range. In Michigan the ores were graded at the mine and delivered directly into the docks, or through the docks into the hold of the vessel. On the Mesabi Range, particularly in steam shovel workings, the shovel would proceed and cut a swath of ore from a bank, and it put in whatever ore came. There was no attempt at grading; it could not be done. These ores after mining were analyzed and reassorted.

Q. By whom were they analyzed?

A. By the owners of the property.

Q. By whom were they reassorted?

A. I will explain; I was going on to explain. They were analyzed and they were assorted by drilling out cars here and there of several grades, so as to put one grade together,

and that was carried as storage in the docks, and very largely as storage in the cars, until in many cases a sufficient quantity accumulated to make a cargo lot. This was not the case on the Michigan ranges, where the grading was all done at the mines before shipment.

Q. After ore was put into a car in Minnesota was there any change in the grading from one car to another?

A. I do not get that.

Q. After ore was put by the shovel into a car, was there any change of ore from one car to another or were grades of similar kinds put together?

A. Similar kinds were put together, and it required a vast amount of dock space, which was not necessary to the Michigan ranges. It required a vast increase in rolling stock in order to carry this ore.

Q. Did that apply to all of the Minnesota mines where the ore was taken out by shovels?

A. It applied to all of them.

Q. So that it applied to the Mesabi as well as to the Vermilion, did it?

A. The ore on the Vermilion Range is not taken out by shovels.

Q. How about the underground mines?

A. At the underground mines the grading is done at the mine.

Q. By whom?

A. By the managers of the mines.

Q. By the managers of the mines?

A. On chemical analysis.

Q. Was there no shovel or open pit work in the Vermilion Range?

A. There was not. They were all deep mines.

Q. Then all of the ore which was subject to that contract of rebate that we talked about from the Vermilion Range was ore taken out of deep mines, was it?

A. It was taken from shaft mines.

Q. And that kind of ore was assorted by the owners just as it was done in Michigan, was it?

A. Precisely.

Q. There are underground mines on the Mesabi, too?

A. There are some.

Q. Are the assortments made there in the same way?

A. In the beginning of the Mesabi they had no idea that they could take off the overburden of that sand drift as deep as they have done, so that they opened a great many mines as an underground proposition. Latterly they have taken off the overburden and converted many of those underground mines into open pit mines; but where the mines were worked as underground mines, the grading was done at the mine, the same as on the old ranges.

MR. DICKINSON: That is all. I wish to state that it is understood that Mr. Kellogg and his clients can enter all objections as to relevancy that have been entered by counsel for the Steel Corporation.

MR. KELLOGG: It is understood that I am to have the benefit of all the objections made by counsel for the Steel Corporation as to exhibits, as well as all testimony?

MR. DICKINSON: Yes.

(Whereupon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

EDWARD T. STOTESBURY

was called as a witnes on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. DICKINSON:

Q. Where do you reside?

A. Philadelphia.

Q. Were you on October 26, 1911, and are you now, a member of the firm of J. P. Morgan & Company?

A. Yes.

Q. How long have you been a member of the firm of J. P. Morgan & Company?

A. Ever since the firm was formed; I think in 1883.

Q. Have you a schedule taken from the books of J. P. Morgan & Company showing, for the years 1898 to 1910, in-

clusive, who were the members of that firm, and if so, please file it as a part of your answer.

MR. LINDABURY: I had the gentlemen in the office make this up, but they have changed from year to year, and I do not know whether Mr. Stotesbury himself could say that it is accurate.

THE WITNESS: I submit a list showing the members of the firm of J. P. Morgan & Company from 1898 to 1910, inclusive.

MR. LINDABURY: Which you believe to be correct?

THE WITNESS: Yes, as follows:

Jan. 1st 1898 & 1899	1900	1901
J. Pierpont Morgan	J. Pierpont Morgan	J. Pierpont Morgan
George C. Thomas	George C. Thomas	George C. Thomas
George S. Bowdoin	E. T. Stotesbury	E. T. Stotesbury
E. T. Stotesbury	C. H. Coster	Robert Bacon
C. H. Coster	Robert Bacon	J. W. Paul, Jr.
Robert Bacon	J. W. Paul, Jr.	J. P. Morgan, Jr.
J. W. Paul, Jr.	J. P. Morgan, Jr.	Temple Bowdoin
J. P. Morgan, Jr.	Temple Bowdoin	Edward M. Robinson
Temple Bowdoin	Edward M. Robinson	Edward F. Whitney
Edward M. Robinson	Edward F. Whitney	Wm. Pierson Hamilton
	Wm. Pierson Hamilton	Charles Steele

Jan. 1st 1902	1903 & 1904	1905, 1906, 1907 & 1908
J. Pierpont Morgan	J. Pierpont Morgan	J. Pierpont Morgan
George C. Thomas	George C. Thomas	E. T. Stotesbury
E. T. Stotesbury	E. T. Stotesbury	Charles Steele
Robert Bacon	J. W. Paul, Jr.	George W. Perkins
J. W. Paul, Jr.	J. P. Morgan, Jr.	J. P. Morgan, Jr.
J. P. Morgan, Jr.	Temple Bowdoin	Edward F. Whitney
Temple Bowdoin	Edward M. Robinson	J. W. Paul, Jr.
Edward M. Robinson	Edward F. Whitney	Temple Bowdoin
Edward F. Whitney	Wm. Pierson Hamilton	Arthur E. Newbold
Wm. Pierson Hamilton	Charles Steele	Edward M. Robinson
Charles Steele	George W. Perkins	Wm. Pierson Hamilton
George W. Perkins		

1909 & 1910

J. Pierpont Morgan
E. T. Stotesbury
Charles Steele
George W. Perkins
J. P. Morgan, Jr.
H. P. Davison
Temple Bowdoin
A. E. Newbold
Edward F. Whitney
Edward M. Robinson
Wm. Pierson Hamilton

By MR. DICKINSON:

Q. Were you a director of the Pennsylvania Steel Company prior to October 26, 1911, and if so, at what time were you such a director?

A. I was a director—I haven't the date with me showing how long I have been a director, but I will send you a statement.

MR. LINDABURY: Can you tell approximately?

THE WITNESS: Since about April, 1901.

By MR. DICKINSON:

Q. Please answer the same question as to the Lackawanna Iron & Steel Company.

A. I have nothing to do with the Lackawanna Iron & Steel Company. I never have been a director.

Q. Have you, during that period, been a director in any other steel or ore companies?

A. I am a director in the Phoenix Iron Company.

Q. State what period.

A. I will have to look that up; some few years.

MR. LINDABURY: About how many?

THE WITNESS: Six or seven years, I should think.

By MR. DICKINSON:

Q. How about the Cambria?

A. I am a director in the Cambria.

Q. Covering what period?

A. I should say six or seven years.

Q. Beginning about when?

A. That would make it about 1904; it must have been

further back than that. I haven't the exact date, but I can get that information and send it to you.

Q. Will you do that, and we will incorporate it as part of your answer?

A. I will do that.

Q. Have you finished answering now as to whether you were a director in any other steel or ore companies than those you have mentioned?

A. I do not think I was a director in any other.

MR. LINDABURY: Are you active in the management of the business of J. P. Morgan & Company?

THE WITNESS: I am not.

MR. LINDABURY: Where are your activities?

THE WITNESS: Philadelphia; with Drexel & Company.

MR. LINDABURY: That is the firm name there?

THE WITNESS: That is the firm name there.

MR. LINDABURY: The same gentlemen who are partners in the one firm are partners in the other, are they not?

THE WITNESS: Yes.

MR. LINDABURY: But their business is kept entirely separate, is it not?

THE WITNESS: Yes.

MR. LINDABURY: Who is the head of Drexel & Company? I mean the active man?

THE WITNESS: Myself.

MR. LINDABURY: Are the dealings between the two firms independent?

THE WITNESS: They are like separate concerns.

By MR. DICKINSON:

Q. Have you any statement or books or papers showing the ownership of stock of J. P. Morgan & Company, or, I will add, any company in which J. P. Morgan & Company is a partner, of the Pennsylvania Steel Company, July 1, 1901 and September 30, 1911?

A. On July 1, 1901 Drexel & Company had on their books showing that they had 1,306.20 shares of the Pennsylvania Steel Company, and on September 30, 1911 they had 519 shares. J. P. Morgan & Company had not any interest in the Pennsylvania Steel Company, as has been stated.

Q. And did J. P. Morgan & Company have any interest in this firm of Drexel & Company to which you have referred?

A. J. P. Morgan had.

Q. Have you any interest in the New York firm of J. P. Morgan & Company?

A. I have.

Q. Answer the same question in regard to the ownership of stock in the Lackawanna Iron & Steel Company.

A. Drexel & Company never owned a share of Lackawanna Iron & Steel Company.

Q. How about J. P. Morgan & Company?

A. I do not know whether they have or not.

Q. How about the Cambria Steel Company?

A. Drexel & Company had on their books showing that they had, July 1, 1901, 32,480-2/5 shares of Cambria Steel Company stock.

Q. How about the latter date, September 30, 1911?

A. I suppose we might have had 30 or 40 or 50 shares, and may be some stock we might have been holding in somebody else's name. I should say not over 100 shares.

CROSS EXAMINATION.

By Mr. Lindabury:

Q. Mr. Stotesbury, first taking Cambria; how long had you had that on this date of July 1, 1901?

A. Only a short time; I suppose perhaps a couple of months.

Q. How came you to have it?

A. We had an order to buy the stock.

Q. From whom?

A. From the market, wherever we could buy.

Q. I mean from whom did you receive the order?

A. From the Pennsylvania Railroad Company.

Q. Did you buy that in pursuance of that order?

A. Yes.

Q. How long did you retain it?

A. Only, I should say, thirty or sixty days.

Q. After that date?

A. After that date.

Q. Did you buy it on commission in the ordinary way?

A. On commission.

Q. And you turned it over to whom?

A. The Pennsylvania Railroad Company.

Q. Charging the usual commission?

A. As I remember.

Q. And is that your only connection with the transaction?

A. Yes.

Q. Did you have any before you began to buy on this order of the Pennsylvania?

A. I do not think we had over 500 shares.

Q. Did you retain any after you executed the order?

A. I don't think we retained more than, possibly, a couple of hundred.

Q. Did you act in the matter otherwise than as bankers and brokers?

A. That was the only way we acted.

MR. DICKINSON: You mean as to that two hundred shares, or the other?

MR. LINDABURY: As to the whole of it.

THE WITNESS: The whole thing.

MR. LINDABURY: The whole 32,480 shares.

By MR. LINDABURY:

Q. Now, as to the Pennsylvania. How came you to have that stock?

A. We were asked by people interested in the Pennsylvania Steel Company to see whether we could form an underwriting syndicate, which we did.

Q. And were you members of the syndicate?

A. Yes.

Q. You say on July 1st, 1911, you had 1306.20 shares?

MR. DICKINSON: Ask him the date of that syndicate, will you please.

MR. LINDABURY: I will later, Judge. Let me finish this first.

By MR. LINDABURY:

Q. Was that your participation in the syndicate?

A. I think that was.

Q. Or was that outside of that?

A. That was outside of the syndicate.

Q. Oh, yes. When was the syndicate formed, about?

A. I have not the exact dates.

Q. Do you remember whether it was about that time or shortly before?

A. Shortly before that.

MR. DICKINSON: Shortly before what time?

THE WITNESS: Before July 1, 1901.

By MR. LINDABURY:

Q. Who were the managers of that syndicate?

A. Drexel & Company.

Q. Who were the stockholders, or earlier holders, at whose solicitation you got up the syndicate?

A. The Pennsylvania Steel Company.

Q. The officers of that company, you mean?

A. Yes; the officers of the Pennsylvania Steel Company.

Q. How much was the stock that the syndicate acquired?

A. The syndicate was for $10,000,000.

Q. And these 1306 shares you had outside of that?

A. Outside of that.

Q. Did the syndicate dispose of that stock?

A. Yes.

Q. When.

A. About that time; I think some time in June or July, 1901.

Q. To whom did they dispose of it?

A. To the Pennsylvania Railroad Company.

Q. All of it?

A. The $10,000,000, yes.

Q. You retained 1306 shares?

A. That was some little stock we had outside of it; because they did not buy all the stock that was in the market.

Q. And the syndicate disposed of its whole stock?

A. Yes.

Q. What ownership have Drexel & Company had since that time in the Pennsylvania stock?

A. I do not suppose they have ever had over a thousand shares.

Q. At any time since?

A. I do not think so.

Q. And the amount at the later date given was 519 shares?

A. That is correct.

MR. LINDABURY: That is all.

MR. DICKINSON: That is all.

MR. COLTON: He has one or two things that he is going to furnish us.

THE WITNESS: Yes—as to when I became a director in the Cambria and in the Pennsylvania Steel.

MR. LINDABURY: He has given the Pennsylvania as about this date.

MR. COLTON: In both cases it is about April, 1901.

MR. LINDABURY: He has not said so as to the Cambria.

By MR. LINDABURY:

Q. Did you become a director in the Cambria somewhere about that time when you bought that stock for the Pennsylvania, or was it later, do you think, Mr. Stotesbury?

A. It was before that.

Q. You were a director in the Cambria before the syndicate sold its stock to the Pennsylvania, were you?

A. There was not any syndicate, you understand, for the Cambria stock.

Q. Yes; that is right.

A. There was a syndicate for that Pennsylvania Steel, but not for the Cambria.

Q. Do you remember as to the Cambria whether or not you became a director before you purchased the large proportion of stock for the Pennsylvania?

A. I was a director in the Cambria Iron Company, and afterwards in the Cambria Steel Company, when that was formed.

Q. Was that before the Pennsylvania bought?

A. Yes.

Q. And you continued?

A. Yes.

Q. And you have continued ever since?

A. Ever since.

Q. Do you remember about when you became a director of the Cambria Iron Company—how long it was before the Pennsylvania bought, or about how long?

A. I should suppose four or five years.

Q. How long were you a director in the Steel Company before the Pennsylvania bought?

A. I do not think I was a director before; only a short time—do you mean the Pennsylvania steel?

MR. DICKINSON: No; the Cambria Steel.

THE WITNESS: Oh! The Cambria Steel?

MR. LINDABURY: Yes; the Cambria Steel.

THE WITNESS: I was a director there for some years.

By MR. LINDABURY:

Q. Before the Pennsylvania bought?

A. Before the Pennsylvania bought.

Q. Now, as to the Pennsylvania Steel: When did you become a director in the Pennsylvania Steel? Before the Pennsylvania bought?

A. Yes.

Q. So that you were in that, also, before the Pennsylvania bought into it?

A. Yes.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Were you a director in each of those companies from about April, 1901, on down to the present time?

A. I cannot remember the date. I would have to look that up.

Q. Will you look it up and send us the information?

A. I shall be very glad to do it.

RE-CROSS EXAMINATION,

By MR. LINDABURY:

Q. Do you remember when the Cambria Iron Company was taken over by the Cambria Steel Company?

A. Yes.

Q. When?

A. I do not remember the date. I was a director at the time.

Q. I understand that it was in 1898, from Mr. Reed.

A. I do not remember the date.

Q. And you were a director at that time in the Iron Company?

A. In the Iron Company.

Q. And were thereafter a director in the Steel Company?

A. Yes, sir.

Q. You came into the Steel Company directorate through the Iron Company, I take it?

A. Yes, through the Iron Company.

By Mr. Dickinson:

Q. You spoke of transactions of the Pennsylvania Company. I want to know whether or not throughout that time, say from April, 1901, down to the present time, Drexel & Company held some shares of stock in each of the companies, the Cambria and the Pennsylvania?

A. Yes; the stock might appear as of record on the books of the Cambria Company, and also of the Pennsylvania Steel Company, while it might not belong to Drexel & Company; Drexel & Company might have loaned money, and that stock might have been transferred to Drexel & Company as collateral.

Q. But I am asking now whether or not Drexel & Company owned stock in its own right in either or both of those companies throughout that period, and if not, for any part of the time?

A. I suppose they have, for small amounts. I do not suppose they have ever owned over a thousand shares.

Mr. Lindabury: Do you want anything more from Mr. Stotesbury?

Mr. Dickinson: Yes. He is going to send us those dates.

The Witness: You want to know when I was elected a director in the Cambria Iron Company?

Mr. Dickinson: The Cambria Steel Company.

Mr. Lindabury: I want the other, too.

Mr. Dickinson: I know you do, and it is all right to have it.

The Witness: Just tell me what you want, and I will furnish it.

Mr. Dickinson: That is all.

Mr. Colton: And as to any other iron and steel companies.

By Mr. Dickinson:

Q. You were asked if you were a director in any others.

A. And I said I was in the Phoenix, which was a small company.

Q. And you were asked if you were in any others except the Phoenix, the Pennsylvania and the Cambria.

A. I do not remember any at all.

Mr. Lindabury: I want to know when you became a director in the prior company that took you down into—

The Witness: (Interposing) You want the information as to the Cambria Iron and the Cambria Steel and the Pennsylvania Steel.

Mr. Lindabury: Was there a Pennsylvania Iron Company before the Pennsylvania Steel Company?

The Witness: I was a director of the Cambria Iron and the Cambria Steel and then the Pennsylvania.

Mr. Lindabury: There was no preceding company with which you were connected before you went into the Pennsylvania Steel?

The Witness: No. There was a Pennsylvania Company and The Pennsylvania Steel Company. One took out a Jersey charter.

By Mr. Dickinson:

Q. In answering about stock, did you have stock in the holding company or in the other company?

A. No.

Q. Not in the holding company at all?

A. No.

Mr. Colton: We had better have it straight. You are speaking of the Pennsylvania Company of New Jersey?

The Witness: I will send you the information as to all of those. One is Pennsylvania Company and the other is The Pennsylvania Company. I will give you both.

Mr. Dickinson: That is all.

(The witness was thereupon excused.)

Mr. Lindabury: In response to two subpoenas to J. P. Morgan & Company I have here certain papers together with the gentleman who examined their files, whom you can put on the

stand if you choose to do so, although I do not believe you will find it necessary after I have given you the statement.

In the first place, they have made up and produce here the statement of directors which you already have.

MR. DICKINSON: Directors or partners?

MR. LINDABURY: Partners of J. P. Morgan & Company.

MR. DICKINSON: We do not want to repeat that.

MR. COLTON: He can just say that he produced that. I believe it to be correct. It went in without objection. We did not make any formal offer of that in evidence.

MR. LINDABURY: I state, for J. P. Morgan & Company, that J. P. Morgan & Company have not now, nor has it at any time within the period covered by the subpoena, owned any stock in the Pennsylvania Steel Company or the Lackawanna Iron & Steel Company or the Cambria Steel Company.

MR. COLTON: That is what the books show?

MR. LINDABURY: Yes; during the period between 1898 and 1010. That is all that that subpoena calls for from them.

The next item in the subpoena is: "All agreements between J. P. Morgan & Company and William Nelson Cromwell and E. C. Converse, or the United States Tube Company, defining Morgan & Company's rights and obligations as bankers, in any way relating to the United States Tube Company or the National Tube Company.

They have copied from the original on their files an agreement dated the 24th of February, 1899 between Messrs. Cromwell and Converse and the firm. I think we have downstairs, and Mr. Cromwell has a printed copy of this.

They also produce another, of February 24, 1899, between the same parties. This Mr. Cromwell I understand, has not and could not find. Has he sent it to you?

MR. COLTON: He said he would send it some time today. He has not as yet done so. He said he had a printed copy.

MR. LINDABURY: He can not find it on his files. He has the first one. I do not know anything about what the other is, but I have them both.

That is in answer to the first request in the subpoena. I have marked it in the margin No. 1.

MR. COLTON: I have not a copy of that subpoena here.

MR. LINDABURY: Here it is. I have marked them in the margin 1 and 2, and so on, for convenience. What is the next item?

MR. DICKINSON: (Reading from subpoena.) "Organization agreement dated September 23, 1897, for proposed $75,000,000 consolidation in respect to the acquisition of certain wire properties, signed by E. H. Gary and Garrett Ten Broeck, parties of the first part, and J. P. Morgan & Company, bankers, parties of the second part.

MR. LINDABURY: I remember that. You got that from the Parks-Gates record, did you not?

MR. DICKINSON: Yes.

MR. LINDABURY: They also produce a copy of it. Here it is (producing paper). What is the next item?

MR. DICKINSON: The next one you have marked as No. 3, but it is No. 5.

MR. LINDABURY: There is no three.

MR. DICKINSON: There is a three, but there is nothing in response to it. It is the third in order of the requests contained in the subpoena.

MR. LINDABURY: Very well, then. They have nothing called for in request No. 3. You can put this gentleman, Mr. Pegram on the stand if you want to. He is here.

MR. DICKINSON: But I want to let you get through, first.

MR. LINDABURY: There is nothing as to request No. 4 in the subpoena. It is marked "None," is it not?

MR. DICKINSON: Yes; it is marked "None." Shall I change your figure "3" to "5" here?

MR. LINDABURY: If you choose, yes. Make it No. 5.

MR. DICKINSON: And the next will be No. 6, and the next 7, 8 and 9.

MR. LINDABURY: All right.

Now, what is No. 5?

MR. DICKINSON: The fifth request in the subpoena is for:

"All agreements and understandings between John D. Rockefeller and J. P. Morgan & Company relating to the acquisition of stock in the Lake Superior Consolidated Iron Mines for the United States Steel Corporation, at an agreed

cash price for said stock in said Lake Superior Consolidated Iron Mines; together with all memoranda relating thereto."

MR. LINDABURY: I produce, first, a letter from Mr. Frick and Messrs. John D. Rockefeller and J. P. Morgan & Company, and, second, a circular letter to the stockholders of the Federal Steel Company, the National Steel Company and others, dated March 2, 1901, signed by J. P. Morgan & Company (which I rather think is in evidence); also letter from J. P. Morgan & Company to the stockholders of the American Bridge Company and the Lake Superior Consolidated Iron Mines, dated April 2, 1901. That is all J. P. Morgan & Company have under that inquiry.

What is the next inquiry?

MR. DICKINSON: No. 6.

MR. LINDABURY: It is my No. 4, which would be 6 as you have them numbered. Read the inquiry, please.

MR. DICKINSON: The sixth request in the subpoena is for:

"All agreements and understandings between the Carnegie interests or Charles M. Schwab, Andrew Carnegie, or other stockholders in the Carnegie Company of New Jersey, or any of them, on the one hand, and J. P. Morgan & Company or other parties acting in behalf of J. P. Morgan & Company, or the United States Steel Corporation, or J. P. Morgan & Company or any of them, on the other hand, relating to the acquisition of the stock of Andrew Carnegie in said Carnegie Company of New Jersey, and the stock of other stockholders in said latter company, for an agreed cash price for said stock, together with all memoranda relating thereto."

MR. LINDABURY: I produce, first, a letter dated February 26, 1901, addressed to J. P. Morgan & Company, and signed by Andrew Carnegie.

Second, a letter dated March, 1901, signed by J. P. Morgan & Company, and addressed to Andrew Carnegie.

Third, letter dated March 13, 1901, addressed to Messrs. Schwab, Phipps and Blackburn, signed—well, it is in blank, over the words "syndicate managers". It is on the letter head of J. P. Morgan & Company, and I will agree that it was signed by them, although this copy does not have their name.

Fourth, a letter from same to same, dated March 13, 1901.

Fifth, a circular letter signed by J. P. Morgan & Company, syndicate managers, dated April 15th, 1901, in print.

Lastly, a form of letter to Messrs. J. P. Morgan & Company, depositary, dated April 15, 1901, designating to whom the Steel Corporation certificates should be issued.

That is all they have under that head.

MR. DICKINSON: Then, under requests Nos. 7, 8 and 9 in the subpoena you have written, "None", so that I suppose your answer would be as to those that there were no papers found?

MR. LINDABURY: Yes.

Mr. Morgan told Mr. Pegram to bring over the Federal Syndicate and National Tube Syndicate. I think we have already gotten those within the last week, have we not?

MR. COLTON: No.

MR. LINDABURY: Then they are here (producing papers). I thought we had supplied them in some other way.

MR. COLTON: We got the American Bridge papers that you handed me, but not these.

MR. LINDABURY: Those are what you wanted.

MR. COLTON: If these are the regular syndicate agreements.

MR. LINDABURY: You got the lists of subscribers?

MR. COLTON: Yes; but are these subscription agreements?

MR. LINDABURY: I assume they are. They are labeled "Syndicate agreements". I have not looked inside of them.

MR. COLTON: I was just looking to see whether they are the subscription agreements.

MR. LINDABURY: You can find out later, and if they are not what you want, let me know. I have no doubt they are. You find that they are, on looking at them?

MR. COLTON: I am looking at the Federal. This seems to be the subscription agreement.

MR. LINDABURY: Mr. Pegram says they are all in that form; the regular form.

Would you like to have Mr. Pegram sworn?

MR. DICKINSON: I cannot tell yet. I want to look at these papers. It will take a little time to examine them. I shall doubtless want to examine him.

STIPULATION.

IT IS HEREBY STIPULATED by and between the Petitioner and the Defendants represented by Messrs. Lindabury, Depue & Faulks, as follows:

That the following Schedule of Iron Ore Properties of the United States Steel Corporation in the Lake Superior and Lake Champlain Districts, as of the date of January 1st, 1908, was furnished by the United States Steel Corporation to the Bureau of Corporations of the United States, in the course of its investigation into the Steel Industry.

Dated New York, March 11th, 1913.

J. M. DICKINSON
HENRY E. COLTON
BARTON CORNEAU
Special Assistants to the Attorney-General.
LINDABURY, DEPUE & FAULKS
by D. A. REED.

(The schedule referred to was thereupon marked "Government Exhibit No. 400, March 11, 1913," and will be found in the volume of exhibits.)

STIPULATION.

It is hereby stipulated and agreed between counsel for petitioner and for the defendants represented by Messrs. Lindabury, Depue & Faulks, as follows:

1. The lease referred to in Division VI of the Petition herein, under the caption "Great Northern Ore Lease," bears date January 2, 1907, and was executed in August, 1907, as specified in the Petition.

2. Said lease covers 39,295.88 acres of land, divided as to character of the Lessor's interest therein in the following manner:

	Acres.
Owned in fee	19,933.81
Owned in fee jointly with others, of which the Lessor companies' proportion is 7,914.95 acres	15,972.26
Held by lease	3,389.81
Total	39,295.88

Of the fee lands 3,961.66 acres are owned by the North Star Iron Company of whose stock the Trustees, parties to said Lease, hold about 91%.

3. According to estimates of the Great Western Mining Company, the lessee, made pursuant to the terms of the lease as of January 1, 1911, there were at that date contained in the various properties leased to it the following tonnages of iron ore:

Merchantable and Non-Merchantable.	*Tons.*
In lands owned in fee	88,009,672
Leases of first class	94,422,072
Leases of second class	103,624,290
	286,056,034

Washable.	*Tons crude.*	*Tons Concentrates.*
In lands owned in fee	20,049,084	12,029,451
Leases of first class	13,814,211	8,288,526
Leases of second class	2,461,342	1,476,805
	36,324,637	21,794,782

Total Merchantable and Non-Merchantable	286,056,034
Total Concentrates	21,794,782
	307,850,816

4. By the terms of said lease the Lessee is required to mine and ship annually not less than the following quantities of iron ore:

750,000	tons	in	the	year	1907
1,500,000	"	"	"	"	1908
2,250,000	"	"	"	"	1909
3,000,000	"	"	"	"	1910
3,750,000	"	"	"	"	1911
4,500,000	"	"	"	"	1912
5,250,000	"	"	"	"	1913
6,000,000	"	"	"	"	1914
6,750,000	"	"	"	"	1915
7,500,000	"	"	"	"	1916
8,250,000	"	"	"	"	1917, and in each

year thereafter.

5. The rates of royalty, which include the charges for the rail transportation, as well as dockage charges, were as follows for the year 1907:

Per cent. iron.	Royalty per ton.	Per cent. iron.	Royalty per ton.	Per cent. iron.	Royalty per ton.
49	$1.1680	55	$1.4572	61	$1.7464
50	1.2162	56	1.5054	62	1.7946
51	1.2644	57	1.5536	63	1.8428
52	1.3126	58	1.6018	64	1.8910
53	1.3608	59	1.6500	65	1.9392
54	1.4090	60	1.6982	66	1.9874

with an increase of 3.4 cents per ton every year, for all grades specified above.

For ore less than 49 per cent., the total charge is fixed at $1.10 per ton without change or annual increase, provided that if any ores are mined from subleases on which there is a higher royalty payment than 30 cents, then the Steel Corporation's royalty shall be equal to that stipulated in the original lease.

The following table shows the basic royalties (being the royalties upon ore containing 59 per cent of iron) for the years 1907 to 1916 inclusive, as increased at the rate of 3.4 cents per ton per annum:

1907	$1.650	1912	1.820
1908	1.684	1913	1.854
1909	1.718	1914	1.888
1910	1.752	1915	1.922
1911	1.786	1916	1.956

6. The Great Western Mining Company, the lessee (a subsidiary of the Steel Corporation), agrees to ship all the ore over the Great Northern Railway to the port of Superior, on Lake Superior with the privilege of substituting an equivalent quantity of ore from other mines if the lessee may wish to divert any of the Great Northern ores to any other railway.

7. The term of the lease extends, with respect to fee ore, "until all merchantable ore 49 per cent and richer in iron shall have been shipped;" and, with respect to lease-holds, during the "term of the leases under which such lands are held, less three months." In the case of fee ores, the lessee is given the right to continue the lease after all ore containing more than 49 per cent of iron has been taken out, for the purpose of mining the ores containing less than 49 per cent of iron.

8. A special provision in the agreement, however, permits the cancellation of the lease by the Steel Corporation on January 1, 1915, upon giving two years' previous notice.

9. In the event of the lessee, the Great Western Mining Company, failing to mine and ship the required minimum quantity of ore in any year, it is required nevertheless to pay the basic royalty for such year (less current transportation and dockage charges) on a number of tons equal to the deficiency, such amount to be offset, however, against royalties accruing in subsequent years on ore mined and shipped in excess of the stipulated minimum amounts.

J. M. Dickinson
Henry E. Colton
Barton Corneau
Special Assistants to the Attorney-General.
Lindabury, Depue & Faulks
by D. A. Reed.

March 11, 1913.

STIPULATION.

The Petitioner offers in evidence Summary Table KK, Government Exhibit 401, entitled "Approximate Market Valuation of Securities of Certain Companies Acquired by United States Steel Corporation in 1901, as Indicated by Average Market Prices of Those Securities, January, 1899, (or Earliest Month for which Quotations Were Available) to March, 1901," together with detailed Tables A, B, C, C1, D, E, F, G, and H, Government Exhibit 402, entitled "Tables Used as the Basis of the Average Market Prices of Stock in Table KK."

It is stipulated that Luther Conant, Jr., Commissioner of the Bureau of Corporations, and his assistant, J. H. Dynes, head of the Statistical Division of the Bureau of Corporations, if called as witnesses in respect to said Tables, would testify that said Tables were prepared under their direction from the sources and in the manner described in said Tables by notes and headings.

Said Tables are objected to as irrelevant and immaterial.

March 11, 1913.

LINDABURY, DEPUE & FAULKS.
J. M. DICKINSON.
HENRY E. COLTON.
BARTON CORNEAU.

(The tables referred to were thereupon marked "Government Exhibit No. 401, March 14, 1913" and "Government Exhibit No. 402, March 14, 1913," and will be found in the volume of exhibits.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Petitioner, *vs.* UNITED STATES STEEL CORPORATION, et al., Defendants.	No. 6214.

STIPULATION.

IT IS STIPULATED by and between the petitioner and the defendants John D. Rockefeller and John D. Rockefeller, Jr., that in March, 1901, John D. Rockefeller, owning about twenty-five twenty-ninths of the capital stock (represented by trustees' certificates) of Lake Superior Consolidated Iron Mines, at which time that company had outstanding capital stock of the par value of $29,424,594, reached an agreement with J. P. Morgan & Company, acting for United States Steel Corporation, to sell the stock in said company then owned by him to J. P. Morgan & Company, acting for said Steel Corporation, for a price reckoned on the basis of $48,000,000.00 for the total outstanding stock of said company; that thereafter, and on March 15, 1901, it was agreed between John D. Rockefeller and J. P. Morgan & Company, acting for said Steel Corporation, that said price for Mr. Rockefeller's stock would be paid and discharged by delivering to him stock of the United States Steel Corporation, as follows:

> For each share of stock (par value one hundred dollars) of the Lake Superior Consolidated Iron Mines 1.35 shares of the Preferred stock of the United States Steel Corporation, and 1.35 shares of the Common stock of the United States Steel Corporation;

that at that time the market price in New York City for said

stock of the Steel Corporation was eighty-three per centum for preferred stock and thirty-eight per centum for common stock, and that John D. Rockefeller made it a condition of his sale of any of his stock that said Steel Corporation should immediately offer the same terms to all other stockholders of Lake Superior Consolidated Iron Mines.

New York, February 28, 1913.

J. M. DICKINSON
HENRY E. COLTON
BARTON CORNEAU
Special Assistants to the Attorney-General.

MURRAY, PRENTICE & HOWLAND,
Attorneys for the Defendants John D. Rockefeller and John D. Rockefeller, Jr.

(Whereupon, an adjournment was taken until Friday, March 14, 1913, at 10:30 o'clock a. m.)

FIFTIETH DAY.

Empire Building,
71 Broadway, New York City.

Friday, March 14, 1913.

Before Special Examiner John Arthur Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the Defendants, Mr. Lindabury, Mr. Severance, and Mr. Reed.

STIPULATION.

MR. DICKINSON: In this cause it is stipulated by counsel for the Government and by Messrs. Lindabury, Depue & Faulks, for the defendants represented by them, that Mr. E. T. Stotesbury became the owner of two shares of common stock in the Pennsylvania Steel Company on May 3, 1901, which he held until September 26, 1901; that on June 17, 1901 he became the owner of 200 shares of preferred stock of said company which he now holds; that on November 1, 1901 the outstanding shares of preferred stock of the Pennsylvania Steel Company were increased by 40,875 shares and each holder of preferred stock was given the privilege of subscribing at par for an amount equal to fifteen per cent of his holdings; that Mr. Stotesbury accepted this right, and on November 1, 1910 became the owner of 30 additional shares of preferred stock, which he now holds, so that at the present time he holds 230 shares of preferred stock in the Pennsylvania Steel Company.

It is further stipulated that, at the first meeting of the incorporators of the Pennsylvania Steel Company, held on May 1, 1901, Mr. Stotesbury was elected a director for three years, and has held the office of director since that date.

It is further stipulated between the same parties that William E. Dodge was a director of the Lackawanna Iron &

Steel Company on January 1, 1901, and was reelected a director of said company on March 6, 1901, at the annual meeting of stockholders, and resigned as a director of said company on May 20, 1902; that he was also elected a director of the Lackawanna Steel Company at a special meeting of the board of directors of said company held May 19, 1902, and served as a director in said company until his death on August 9, 1903.

MR. LINDABURY: These two offers are objected to on the ground that they are irrelevant and immaterial.

MR. DICKINSON: Counsel for the Government asks to have marked for identification certain papers produced by J. P. Morgan & Company in response to a subpoena addressed to them.

(The papers referred to were thereupon marked "Government Exhibit No. 403 for identification," to "Government Exhibit No. 408 for identification," inclusive.)

MR. DICKINSON: The papers just marked are herewith introduced in evidence, as follows:

Government Exhibit No. 403, entitled "Tube Co. Bankers' Contract," being an agreement made the 24th day of February, 1899, by and between William Nelson Cromwell and Edmund C. Converse, jointly and so forth, parties of the first part, and Messrs. J. P. Morgan & Company, and so forth, parties of the second part.

MR. LINDABURY: That is objected to on the ground of irrelevancy and immateriality.

MR. DICKINSON: Also Government Exhibit No. 404, entitled "Tube Co. Financial Contract," being an agreement made the 24th day of February, 1899, between the same parties.

MR. LINDABURY: That is objected to on the ground of irrelevancy and immateriality.

MR. DICKINSON: Also Government Exhibit No. 405, being an agreement made the 23rd day of September, 1897, by and between Elbert H. Gary and Garrett H. Ten Broek and so forth, parties of the first part, and J. P. Morgan & Company, parties of the second part.

MR. LINDABURY: That is objected to as irrelevant and immaterial, it not appearing that that agreement was ever delivered or carried out.

MR. DICKINSON: Also Government Exhibit No. 406, entitled "Federal Steel Company. Syndicate Agreement," being an agreement dated the 7th day of September, 1898, by and between J. P. Morgan & Company, party of the first part, and the subscribers hereto, and so forth, parties of the second part.

MR. LINDABURY: That is objected to on the ground of irrelevancy and immateriality.

MR. DICKINSON: Also Government Exhibit No. 407, entitled "National Tube Syndicate," being an agreement dated the 22nd day of June 1899, by and between J. P. Morgan & Company, and so forth, parties of the first part, and William Nelson Cromwell and Edmund C. Converse, and so forth, parties of the second part, and subscribers hereto.

MR. LINDABURY: That is objected to on the same grounds as the Federal Syndicate Agreement.

MR. DICKINSON: Also Government Exhibit No. 408, entitled "American Bridge Company. Syndicate Agreement." May 4, 1900, an agreement made on said date between J. P. Morgan & Company, party of the first part, and the subscribers hereto and so forth, parties of the second part, and attached thereto and a part thereof, paper entitled "Exhibit A," signed I. Gifford Ladd and J. P. Morgan & Company.

MR. LINDABURY: That is objected to on the ground of irrelevancy and immateriality.

(The papers referred to were thereupon marked "Government Exhibit No. 403, March 14, 1913", to "Government Exhibit No. 408, March 14, 1913", and will be found in the volume of Exhibits.)

MR. DICKINSON: It is agreed by counsel that the said exhibits, Nos. 406, 407 and 408, inclusive, are the agreements referred to in the stipulation made in this cause on February 28, 1913, between the petitioner and the defendants represented by Messrs. Lindabury, Depue and Faulks, in regard to the subscribers to the syndicates of the Federal Steel Company, National Tube Company, and American Bridge Company.

EDWARD S. PEGRAM,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dickinson:

Q. Have you a copy of your subpoena there, Mr. Pegram?

A. Yes. (Producing paper.)

Q. Where do you live?

A. New York City.

Q. What is your age?

A. Fifty-one.

Q. What is your occupation?

A. I am employed by J. P. Morgan & Company.

Q. How long have you been employed by J. P. Morgan & Company?

A. A little over eight years.

Q. In what capacity are you now employed?

A. I have general charge of their office matters.

Q. And how long have you had charge of the office matters?

A. For several years past.

Q. State whether or not that gives you the custody or control or the right of examination, either, of papers belonging to J. P. Morgan & Company?

A. It gives me access to all papers and records.

Q. J. P. Morgan & Company were summoned to produce certain papers by the subpoena, a copy of which you have, and a copy of which I will put in the record now as an exhibit.

Mr. Lindabury: I object to the offer of the subpoena. I know of no practice justifying that.

(The subpoena referred to was thereupon marked "Government Exhibit No. 409, March 14, 1913," and will be found in the book of exhibits.)

By Mr. Dickinson:

Q. When was this subpoena first called to your attention?

A. About six days ago; perhaps a little longer, I cannot tell exactly, but within a very recent time.

Q. I would like you to fix it as near as you can.

A. Well, say two weeks.

Q. Two weeks ago?

A. Yes.

Q. You were called upon, among other things, to produce all correspondence or other memoranda relating to the negotiation of the Hill ore lease, together with all reports made by or to the special committee consisting of Messrs. Gary and Frick, said committee having been appointed to carry on negotiations with the Hill interests for the acquisition of the Hill ores. Did you make personal search for those papers?

A. I did.

Q. When?

A. Within the last ten days.

Q. Did J. P. Morgan & Company have any papers relating to the lease of the Hill ores?

A. Not that I could find, sir.

Q. Did you examine their books and correspondence?

A. I did, yes.

Q. And found no copies of any letters on that subject?

A. No, sir.

Q. No memoranda of any kind relating thereto?

A. No, sir.

Q. Suppose Mr. Perkins had written a letter, would a copy of that be among the papers of J. P. Morgan & Company?

A. Not necessarily.

Q. How are papers of that character, or of that date, kept? You see this refers to a transaction of some years ago.

A. Yes, sir.

Q. How are those papers kept?

A. The letters coming in are filed daily in folios and numbered as received, and the answers are press copied in press copy letter books.

Q. Are they indexed?

A. Yes, sir.

Q. Now, in respect of the negotiation of the Hill ore leases, state just what examination you made, what character of examination?

A. I looked through the index, letters coming in and letters going out, and in the various files of papers in the vault, where documents of that kind might be kept, and which are indexed when so kept, and I failed to find any record of any Hill ore negotiations or correspondence or anything related to it.

Q. State whether or not necessarily correspondence of that character, or memoranda of that character would be filed.

A. It is customary in the office for all correspondence signed with the firm name to be press copied and entered in their record; if they were signed by persons, other than the firm name, they would not necessarily go into the records.

Q. What do you mean by "persons other than the firm name"?

A. Any member of the firm doing any personal correspondence and conducting it over his name.

Q. Where would those records be?

A. In the record of the individual who conducted the correspondence.

Q. So, besides transactions conducted in the name of the firm, were there also transactions conducted by and on account of the firm, conducted in the names of individuals in the firm?

A. I am unable to say as of this time.

Q. How is it now?

A. Now it is as I stated; the correspondence conducted by a member of the firm in his own name would not necessarily go into the firm records. They would be his personal papers.

Q. You have not any access to them?

A. I have not any access to personal papers of any member of the firm.

Q. If these transactions herein referred to were conducted over the personal signature or initials, or conducted personally by J. P. Morgan, Sr., they would not necessarily go into the files of J. P. Morgan & Company?

A. No, sir.

Q. Who has the custody of such papers, of that character that I have just mentioned?

A. That I am unable to say; I do not know.

Q. You made no search at all among any papers of that character, that may have been kept in Mr. Morgan's files?

A. I would not have any access to those papers.

Q. Although they may relate to business of the firm?

A. That I could not say.

Q. I say, even if they relate to business of the firm, you would not have any access to them?

A. No, sir.

Q. Is there anyone here who has access to them?

A. No one that I know of here, no, sir.

Q. Did anyone assist you in this search?

A. Yes, sir.

Q. Who?

A. My office assistants.

Q. What are their names?

A. D. J. Lowry.

Q. Anyone else?

A. Walter B. Horn.

Q. Anyone else?

A. No; that is all I recall at the present time. I might have asked other boys to go and get books and papers for me, but those are all that I recollect.

Q. I wish you would mention as to the part of this search that was conducted by them, respectively; describe what they did.

A. Looked up records for me, and indexes, and looked up letter books that were not in the office, and filed away in the storage vault in Brooklyn.

Q. And reported to you?

A. And reported to me, yes.

Q. What did you do yourself?

A. I looked through the files that were in the office.

Q. So your personal investigation only extended to the files that were in the office?

A. At 23 Wall Street.

Q. How far back do they go?

A. 1871.

Q. As I understand from you there were other papers that they examined under your direction, which were not in the office?

A. Yes, and general letter books and press copy books, and the general correspondence in which some of these papers might have been filed.

Q. How about original papers or documents or memoranda, where would they be filed?

A. They would be filed in the vault and boxes in the office at 23 Wall Street.

Q. All of them in the office?

A. Yes.

Q. Would they be indexed or not?

A. They are all indexed.

Q. Who examined those indexes?

A. I did.

Q. You examined those?

A. Yes.

Q. As to the examination that you referred to as having taken place in Brooklyn, you are simply relying on what they reported to you?

A. So far as the searching of the indexes is concerned, yes.

Q. Did you make any search for the papers other than following up what they indicated to you, as the indexes showed?

A. No sir, because there are no other books or papers over there except the general letter books and general letter files, and the indexes to them.

Q. And those indexes you have not yourself examined.

A. No, sir.

Q. You only took their report?

A. Yes.

Q. J. P. Morgan & Company were also summoned to produce the agreements and understandings between the Carnegie interests and C. M. Schwab, Andrew Carnegie and other stockholders in the Carnegie Company of New Jersey, or any of them, on the one hand, and J. P. Morgan & Company and other parties acting in behalf of J. P. Morgan & Company, or

the United States Steel Corporation, or J. P. Morgan or any of them, on the other hand, relating to the acquisition of stocks of Andrew Carnegie in said Carnegie Company of New Jersey, and the stock of other stockholders in said latter company for an agreed cash price for said stock, together with all memoranda relating thereto. I will ask you whether or not you know anything of the original agreement made between Carnegie and J. P. Morgan & Company, or between either of them and other parties, acting either for themselves or through others for them, of February 26th, 1901. Do you know anything of any agreement of that sort at all?

A. Nothing beyond the copies that I have produced here.

Q. The agreement I referred to was not dated the date of that copy; I am speaking now of a paper before that.

A. No, I do not know anything about that. I produced some papers in answer to this.

Q. But not a paper of that date?

MR. SEVERANCE: Yes; of that date.

MR. LINDABURY: Yes; there you are. (Producing paper.)

By MR. DICKINSON:

Q. The paper I intended to refer to, and I made an error, was one of date anterior, or, if not dated, one that was made anterior to that of February 26, 1901, which you produced.

A. No, sir.

Q. You know nothing of that?

A. No, sir.

Q. State what search you made in regard to these papers just referred to in that part of the subpoena that I have read to you?

A. I went through the books and records and indexes personally, myself, in the office at 23 Wall Street, and the papers I produced were all that I could find having any bearing on the papers asked for.

Q. You say this was called to your attention something like ten days ago, or about that time?

A. I should think so, yes.

Q. How long did you devote to that search, covering everything called for in this subpoena?

A. Off and on I devoted some time to it every day.

Q. With regard to these was any examination made by those clerks whom you have named?

A. No, sir; not in regard to these papers.

Q. Not in regard to these papers?

A. No, sir.

Q. If there were any letters written or received in regard to the transactions described in this part of the subpoena that I have described to you, which are in existence in Brooklyn or referred to in the indexes there, then you have no report about them at all?

A. No, sir.

Q. And there has been no search, so far as you know, in the Brooklyn papers, in respect of these papers referred to in the part of the subpoena I have described to you?

MR. LINDABURY: The witness has already said there were no files of this character in Brooklyn; that such files are all in New York.

MR. DICKINSON: I am asking him about letters.

By MR. DICKINSON:

Q. I understand you to say that in Brooklyn there are letters and copies of letters——

A. General letter files——

Q. Referring to general transactions of J. P. Morgan & Company?

A. General correspondence.

Q. And how far back do they go?

A. To 1879, and some of them to 1862 and 1863.

Q. How late down do they come?

A. To within ten years.

Q. So if there were any papers of that character there referring to any correspondence on or about the year 1901, they would be within that period?

A. Yes, sir.

Q. State whether or not J. P. Morgan & Company kept a special file with regard to their transactions in regard to the formation of the American Bridge Company.

A. No, I do not think any special file was kept. There is a book called the Syndicate Book, in which papers of this character were kept. You might call that a special file.

Q. What kind of a book is that?

A. That is a large book in which papers are filed relating to different things, under the headings where they belong.

Q. Who has charge of that book?

A. I have access to it. It is in the vault there.

Q. Did you examine that book?

A. Yes, sir.

Q. State whether or not there is anything in that book referring to the American Bridge Company.

A. Yes; I think there might be.

Q. Of what character of things?

A. In connection with stock transactions.

Q. Anything in connection with the formation of the American Bridge Company?

A. No; I think not.

Q. If there were such papers as that, where would they be kept, if not in that book?

A. They might be kept in some file there, in some boxes in the vaults.

Q. What examination, now, did you make with regard to appraisals and valuations of the property acquired by the American Bridge Company? Just state, now, fully just what you did in response to that part of the subpoena.

A. I looked in the Syndicate Book, where papers of that kind——

Q. That is the book where those stock transactions were kept that you have just referred to?

A. Yes. I went through the index to the various boxes and files where other papers of a similar character were kept, and also examined the contents of the various boxes.

Q. How are those indexes designated? Just describe the indexes that would refer to any appraisals and valuations of various properties acquired by the American Bridge Company, if you had any such papers as that in boxes. Describe what indexes that would appear in—the reference to them.

A. They would appear in an alphabetical book index.

Q. What is the title of that book?

A. "Index to books and papers in the vault."

Q. And how do they run? Are they numbered or named?

A. They are in packages. The packages are numbered

and the boxes in which they are kept are numbered, and the index refers to them by the box number.

Q. But how are those indexes indicated? How are they described or designated—by letters, by numbers or by titles?

A. They are described by titles.

Q. Were papers of the same character kept together?

A. No, sir; not necessarily. They would be at different times, in different boxes; at whatever time they were filed away.

Q. These indexes, then, are entitled how, for instance? What appears on them?

A. It was a regular index book.

Q. What is the name on it?

A. "Index to books and papers in the vault."

Q. That is what appears on the book?

A. That is what appears on the book.

Q. On a label?

A. Not on a label; on the inside of the book.

Q. "Index to books and papers"?

A. "Index to books and papers in the vaults"; and gives the list of the boxes and of the various papers in the boxes.

Q. What period did you examine, now, in your investigation to find out whether they had any appraisals and valuations of the various properties acquired by the American Bridge Company? What period did you examine in the boxes to find out if there were any such papers?

A. I examined the indexes for any record of where papers under that head might be filed. Then I examined the various boxes which were referred to for the papers.

Q. But over what period covered by any indexes did you examine the indexes?

A. The indexes come back from 1871 to the present time.

Q. Where did you begin with these indexes in examining them to answer this part of the subpoena?

A. Until I came down to the period called for—1900 and 1901, or thereabouts.

Q. You began thereabouts?

A. No. I took all the papers from the start, and went through all the boxes.

Q. But I mean you went through the boxes where the indexes referred you to the boxes?

A. Yes, sir; for the various papers.

Q. But I want to address your attention, now, to what period of these indexes did your examination extend?

A. About the time referred to in the subpoena—1900 and 1901, or thereabouts.

Q. As I understand you, then, you first examined any boxes of books covering the period from about 1900 and 1901 or thereabouts. What do you mean by "thereabouts"?

A. May I tell you?

Q. Yes; I would like to know.

A. These books contain all the papers of completed transactions starting from 1871 up to the present time.

Q. How many boxes are there?

A. There are twelve of these large boxes, into which at various times I have transferred the contents of over forty other boxes. All of those papers from 1871 up to the present time I have personally checked over and handled at various times. I went through all of these papers, anywhere and everywhere, to find out if, at any time, we had any of those papers you called for.

Q. Do you mean to say that, in response to this subpoena, without regard to the index, you examined all of these books?

A. All of those records. I have been through them all.

Q. In all of those boxes?

A. Not at this particular time. At different times.

Q. I am asking you in this particular investigation that you made in order to enable J. P. Morgan & Company to respond to this command to produce all appraisals and valuations of the various properties acquired by the American Bridge Company at or about the time of its formation submitted to J. P. Morgan & Company. I ask you how you proceeded in that. Tell us what you did.

A. I went through the boxes in which they keep these papers, having first referred to the index, which would designate the box in which they were kept. Then I examined the contents of these various boxes to see if there were any appraisals or any valuations, or any papers in any way relating to the question asked in the subpoena.

Q. But you first went to the index?

A. Truly; yes.

Q. What period covered by the index did you go to to get the information to enable you to go to the boxes?

A. The index would not show any period. It simply shows the number of the box in which the papers under that heading were kept. It might be 1890, 1892, or at any date.

Q. Were those indexes continuous?

A. Yes.

Q. They began when?

A. They cover papers that are filed there that are dated as far back as 1871.

Q. The indexes do?

A. Yes, sir.

Q. Is a volume of index completed and then a new one begun?

A. No, sir. This is an index that was made of all those papers at some time—I do not know how long ago; ten or twenty years ago, maybe, or longer than that; it was made at that time covering all papers of that description which were in existence, and a complete inventory of them was made. That is the index that I have examined in looking for these papers.

Q. What volume is that in?

A. It is all in one book.

Q. All relating to what?

A. All relating to negotiations of this character, of this kind, of all these various agreements that are filed in this syndicate book that go with papers of this character and nature, operations conducted by the firm during a long period of years.

Q. All of those are in one book?

A. They are all indexed in this one book.

Q. And that covers the whole period, and this book you examined in order to find out what boxes to examine?

A. True.

Q. How is that particular book which covers the subject matter that we have been discussing entitled or designated or identified?

A. It is the index to the books and papers in the vault. It is known as such.

Q. Just one book?

A. Just one book.

Q. All of the books and papers in the vault are covered by one book?

A. Truly.

Q. Not a series of books?

A. No. There might be five or six boxes containing transactions of just one kind, but there would only be one entry on the index covering all of those. Take, for instance, the Chesapeake & Ohio reorganizaton. There are six boxes of papers of the Chesapeake & Ohio reorganization, but the whole thing is covered by one entry, and in order to find any particular paper in that connection that you might want, I would go through those six boxes to find it.

Q. Are these matters all carried alphabetically in the index book?

A. Under the one head.

Q. Suppose an entry is made referring to papers as of one date, and later there is a supplemental transaction, or other papers are put away relating to the same transaction; is that entered again in the index, or just a new reference made under the first reference?

A. It would be entered again.

Q. You examined, then, that whole index?

A. Yes, sir.

Q. In regard to all the matters referred to in this subpoena?

A. Yes, sir. That is the only place where you could find them. There could not be any other place to look for them.

Q. Do you know whether all papers of a transaction of that sort necessarily go into the boxes, or whether some of them are kept by members of the firm, in particular transactions?

A. As far as I know, all the papers in any completed transaction are filed in the boxes.

Q. Only as far as you know?

A. As far as I know, they are all handed to me at this time. As of the time you speak of, I have no knowledge of what was done, except as the records show. At this time the

practice is to hand all the papers, when completed, to me, and they are filed in that way.

Q. To hand those that are to be filed to you?

A. To be filed away, yes.

Q. Do you undertake to say that in every transaction all the papers are thus filed, or only those are filed which are handed to you to be filed?

A. As far as I know all are filed.

Q. Do you undertake to say positively that all papers relating to any transactions, no matter what their character may be, are filed in that way?

A. No, sir; I could not say that.

MR. LINDABURY: I object to the character of these questions, in so far as they ask the witness what he undertakes to say or to do. It is not a proper way to examine the witness.

By MR. DICKINSON:

Q. I will just ask you what you say, if there is any objection to the other. Do you say that all the papers in every transaction are always filed in the boxes that you indicate?

A. All completed transactions, as far as I know, are so filed.

Q. Do you say that there are no papers that are not so filed; that you know that there are none that are not so filed?

A. I cannot answer as to that.

Q. That is what I thought you said before.

MR. LINDABURY: He said it four or five times before.

By MR. DICKINSON:

Q. The subpoena also calls for estimates made by Sellwood, Hulst or others.

A. Well, Judge, I can answer that in the same way as I have answered as to the American Bridge Company, that personally I myself went through all these things and made an exhaustive search.

Q. And whatever I have asked you in regard to the—

A. Whatever you have asked me in regard to the previous question would apply in this case.

Q. Would apply to the whole subject matter?

A. Of these particular things.

Q. In regard to which it is reported that no papers are found?

A. Yes.

Q. In examining or looking for papers under estimates made by Sellwood, Hulst or others, what headings did you examine in the index book?

A. I examined under S. and under H., and under United States Steel, and all the various headings that might possibly give any indication of where such papers were, if they were there at all, or had been there.

Q. I want to ask you a little more particularly, although your last answer applied generally in regard to this. They were asked to produce all papers, reports, appraisals, financial statements or documents submitted to J. P. Morgan & Company in connection with the organization of the United States Steel Corporation, bearing upon the character and value of the properties to be taken into said corporation. Where did you make search for these in the way you have described?

A. In the syndicate books, and in the boxes where papers of that kind are tied up and filed and indexed under United States Steel or American Bridge, as the case may be.

Q. So far as they were referred to by the index or the syndicate book?

A. Yes; so far as they were referred to by the index or the syndicate book, and further than that wherever they might have been placed in large boxes, if they were large documents, maps, and things like that, I would look through those to see if there was anything of that kind there.

Q. Did you find any maps?

A. No sir; nothing at all.

Q. But if any of those papers were in the possession of any of the individual members of the firm of J. P. Morgan & Company, you had no access to them?

A. No sir; I could not say anything about that.

Q. If there were any agreements and understandings, or contracts between John D. Rockefeller and J. P. Morgan, relating to the acquisition of stock in the Lake Superior Consolidated Iron Mines, do you know where they would be kept?

A. No sir; as to that I have no knowledge at all.

Q. State whether or not the letters of Mr. G. W. Perkins for the period of 1901 to 1908, relating to matters in which J. P. Morgan & Company and their clients were interested, are kept with J. P. Morgan & Company?

A. I don't know anything about Mr. Perkins' papers, sir. Any letters, whether written by Mr. Perkins or any other member of the firm, to which the firm name is signed, would be kept in the firm records. That is the rule of the office.

Q. I think you have stated already that if Mr. Perkins' name was signed, they would not be.

MR. LINDABURY: I do not think he said so; not necessarily.

THE WITNESS: Not necessarily, no. I could not say definitely, one way or the other, as to that. I would have no information about it.

CROSS EXAMINATION.

By MR. LINDABURY:

Q. Are any letters relating to firm business, but signed by individuals, kept in the firm letter books?

A. No sir, nothing in the firm's letter books except letters signed by the firm.

Q. What did you mean by saying that letters signed by individual members of the firm would not necessarily be kept there? That was your statement, and I understand you now to say that they were not at all kept there.

A. I meant probably that they would not necessarily go into the firm files. That was the Judge's question, whether they would be in the files, any correspondence between members of the firm relating to those things.

Q. But letters written by members of the firm are not in the files, but in the copy books, I suppose; is that a fact?

A. Not unless they are signed with the firm signature. Nothing goes into any firm letter books except letters signed with the firm signature.

Q. You did find papers relating to various subjects of inquiry in the progress of your search?

A. Some papers, yes.

Q. And you produced those the other day, last Tue[illegible]'ay?

A. Oh, yes, all those I could find in any way relating to the questions asked in the subpoena; I had copies made and brought over here.

Q. Those you gave to Judge Dickinson on Tuesday; or they were given to him in your presence?

A. Yes.

Q. Was the subpoena itself given to you?

A. Yes.

Q. So that you had that before you?

A. Oh, truly, I worked from that.

Q. In making the search?

A. Yes.

Q. And that was given to you at the beginning, when you began your search?

A. Yes; ten days or two weeks ago.

Q. When you began the search, which you say was ten days or two weeks ago?

A. Yes.

Q. I will ask you whether or not your search developed a paper dated February 26, 1901, from Andrew Carnegie to J. P. Morgan & Company, and I will show you what purports to be a copy.

A. This is copied from the file of the syndicate book.

Q. Will you answer the question? Did or not your search develop such a letter?

A. Not the original letter.

Q. No, but a copy?

A. A copy, yes.

Q. Did you produce that to Judge Dickinson?

A. Yes.

Q. And you have that with you?

A. Yes.

MR. LINDABURY: I ask to have this marked for identification.

(The paper referred to was thereupon marked for identification "Defendants' Exhibit, Pegram, No. 32, March 14, 1913.)

By MR. LINDABURY:

Q. Did you find this letter, you say, in the syndicate book?

A. Yes, in the syndicate book.

MR. LINDABURY: Judge Dickinson, I understand you do not care to offer this in evidence.

MR. DICKINSON: Let me see it.

By MR. LINDABURY:

Q. Did you give that to Judge Dickinson, Tuesday?

A. I handed it to him with the other papers.

Q. The particular one I have had marked?

A. Yes.

MR. LINDABURY: Didn't you read it, Judge?

MR. DICKINSON: No; I am reading it now.

MR. LINDABURY: Didn't you read it, Brother Colton?

MR. COLTON: Yes. I did not want to put it in because I understood it was not the original contract between Morgan and Carnegie.

MR. LINDABURY: It seems to be a very important paper, that embodies all the terms of the contract.

MR. COLTON: Not the first contract.

MR. LINDABURY: Oh, yes. What went before is evidently merged in it and recited and confirmed.

MR. COLTON: For the purpose of the New Jersey laws.

MR. LINDABURY: There is no indication on it that there was any previous paper.

MR. REED: Of course Mr. Colton will call the person from whom he got that understanding.

MR. LINDABURY: I suppose so, but I suspect it came out of blue sky. Will you let me see the subpoena served upon J. P. Morgan & Company?

(The subpoena was produced and handed to counsel.)

MR. LINDABURY: I call the attention of counsel for the Government to this clause of the subpoena served upon J. P. Morgan & Company. I read: "All agreements and understandings between the Carnegie interests or C. M. Schwab, Andrew Carnegie or other stockholders in the Carnegie Company of New Jersey, or any of them, on the one hand, and J. P. Morgan & Company or other parties acting in behalf of J. P. Morgan & Company, or the United States Steel Corporation, or J. P. Morgan, or any of them, on the other hand, relating to the acquisition of the stock of Andrew Carnegie in said Carnegie Company of New Jersey, and the stock of

other stockholders in said latter Company for an agreed cash price for said stock, together with all memorandum relating thereto."

I state to counsel that this is produced in response to that clause of the subpoena, and again I ask them if they decline to put it in evidence.

MR. DICKINSON: I have already stated that we decline to put it in evidence for the reason that we believe it does not set forth the full transaction; and it was a colorable letter, and there are papers preceding it which, if produced, would explain the whole transaction.

MR. LINDABURY: To that I answer that, on the face of the letter, it plainly is not colorable, and there is nothing, either in the record or this paper, to justify that remark. It is a complete letter, embodying completely the terms of a contract, referring to no preceding letter or memorandum.

By MR. LINDABURY:

Q. I ask if you discovered among the files a letter from J. P. Morgan & Company to Andrew Carnegie, dated March 2nd, 1901, and I show you a paper which you then produced.

A. This paper I found in the files, which I produced and which was handed to Judge Dickinson on Tuesday.

Q. You gave that to the Judge Tuesday?

A. That was handed to him with the other papers.

MR. LINDABURY: I ask to have that marked for identification.

(The letter referred to was thereupon marked "Defendants' Exhibit No. 33, for identification.")

MR. LINDABURY: I state to counsel this also is described in the subpoena and is produced in response thereto and I ask if they decline to put that in evidence.

MR. DICKINSON: Let me see that. We make the same statement as to that as to the other.

By MR. LINDABURY:

Q. Did you find among the files a letter addressed by the syndicate managers to Messrs. C. M. Schwab, L. C. Phipps and William W. Blackburn, as a committee, dated March 13,

1901, referring to the sale of the Carnegie interests to the proposed new corporation?

A. Yes.

Q. Did you produce that in response to the subpoena?

A. Yes.

Q. And you gave it to Judge Dickinson?

A. Yes.

MR. LINDABURY: I ask to have it marked for identification.

(The letter referred to was thereupon marked "Defendant's Exhibit No. 34 for identification.")

MR. LINDABURY: This letter also was produced in response to the subpoena. Do you decline to put it in evidence?

MR. DICKINSON: We will put in evidence such papers as we choose. We have put in evidence such papers as were produced under the subpoena that we wanted to put in evidence.

MR. LINDABURY: And you do not want to put this in, I understand you?

MR. DICKINSON: We did not put it in.

By MR. LINDABURY:

Q. Did you also discover among the files a second letter of the date of the last letter, March 13, 1901, addressed by the syndicate managers to Messrs. Schwab, Phipps and Blackburn, relating also to the proposed Carnegie purchase?

A. Yes.

Q. Did you produce that Tuesday in response to the subpoena?

A. Yes.

Q. And gave it to Judge Dickinson?

A. Yes.

Q. Along with the other Carnegie papers?

A. Yes.

MR. LINDABURY: I ask to have that marked for identification.

(The letter referred to was thereupon marked "Defendants' Exhibit 35, for identification.")

MR. LINDABURY: I ask if counsel decline to put this in evidence also.

MR. DICKINSON: We have put in evidence what we wanted to put in evidence.

MR. LINDABURY: Is that your only answer?

MR. DICKINSON: I think it is sufficient.

MR. LINDABURY: Before Mr. Morgan is examined, I wish to call attention to the fact that Mr. Pegram produces from the files of J. P. Morgan & Company a letter from H. C. Frick to John D. Rockefeller, dated March 15, 1901. That is not put in, I believe, however, because another copy of it is already in evidence. Am I right about that?

MR. COLTON: No. Another copy of that letter is marked for identification, and that letter is not put in because we have information that it is not the original agreement between Morgan and Rockefeller.

MR. LINDABURY: I object to this statement of information and making it a part of this record. In the first place the information is inaccurate, and in the second place such statements have no proper place in the record.

MR. DICKINSON: You challenged the reason, I understand, of not putting it in.

MR. LINDABURY: No; I wanted to show that it was produced, and it was my impression when I made the statement that it was already in evidence, and I wanted to show that something had been produced.

MR. DICKINSON: You are raising no question as to why it was not put in?

MR. LINDABURY: No.

MR. DICKINSON: Then we are perfectly willing to have it straightened out.

MR. LINDABURY: I simply want to show that they do produce it as something found.

MR. DICKINSON: This is in line with your other questions?

MR. LINDABURY: No, because I thought it was in evidence. I made the statement upon the idea that it was already in.

MR. REED: It was testified to by Mr. Murray.

MR. LINDABURY: Mr. Murray testified about it the other day, didn't he?

MR. DICKINSON: He stipulated about it.

MR. REED: He testified to it, and it was marked for identification and Mr. Colton refused at that time to offer it in evidence.

MR. COLTON: I said never a word, which is my custom.

MR. REED: Neglected, instead of refused, then.

(At the request of Mr. Lindabury, the following colloquy was repeated by the stenographer:)

"MR. LINDABURY: Before Mr. Morgan is examined, I wish to call attention to the fact that Mr. Pegram produces from the files of J. P. Morgan & Company a letter from H. C. Frick to John D. Rockefeller, dated March 15, 1901. That is not put in, I believe, however, because another copy of it is already in evidence. Am I right about that?

MR. COLTON: No. Another copy of that letter is marked for identification, and that letter is not put in because we have information that it is not the original agreement between Morgan and Rockefeller."

MR. LINDABURY: I call upon counsel to disclose the source of that statement or else withdraw it.

MR. COLTON: I decline to do it.

MR. LINDABURY: I ask to have these papers produced by the witness, and which relate to the acquisition of the Rockefeller ore property, marked for identification.

(The papers referred to were thereupon marked "Defendants' Exhibit No. 36, for identification.")

J. P. MORGAN, JR.,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. You live in New York?

A. Glen Cove; yes.

Q. You are a member of the firm of J. P. Morgan & Company?

A. Yes.

Q. How long have you been a member of that firm?

A. Since 1894, when it was started; December 31.

Q. You have seen the subpoenas addressed in this cause to your firm, have you?

A. Yes.

Q. Have you examined them?

A. I looked through them.

Q. And addressed to you also, individually?

A. Yes.

Q. State whether you yourself have made any search with a view of answering that subpoena, or whether you relied upon the search made by Mr. Pegram or those acting under him.

A. I relied on the search made by Mr. Pegram.

Q. And made none yourself?

A. I made none myself.

Q. Where would the original contracts or agreements or memoranda or understandings be kept, passing between John D. Rockefeller and J. P. Morgan & Company or their agents, relating to the acquisition of stock in the Lake Superior Consolidated Iron Mines for the United States Steel Corporation?

A. To John D. Rockefeller and J. P. Morgan & Company or their agents?

Q. Strike out "their agents."

A. They would eventually go to these boxes in the vault which Mr. Pegram testified to.

Q. Suppose those transactions took place between Mr. Morgan, acting personally; where would those papers go?

A. Probably go to the same place.

Q. Have you any special knowledge of these particular papers to which I am referring?

A. Not at all; and if I might put in there, it has always been a rule in the firm that all papers in regard to the firm's business go to one place and are kept together as much as possible, pending transactions, until the transaction is completed. Then they are put away together.

Q. If there were any estimates or appraisals or valuations submitted while these transactions were under consideration and before the companies were actually formed, with respect to properties of the various companies, such as the American Bridge Company, the Consolidated Iron Mines and

others, that went eventually into the United States Steel Corporation, would those papers which showed values and estimates continue with Morgan & Company or would they be turned over to the United States Steel Corporation?

A. I do not know; I should think propably they would stay with us.

Q. When this subpoena came to you, what steps, if any, did you take to comply with the commands of the court?

A. I went to Mr. Pegram and to one of my partners and said to them: "They are calling for these papers; you must find out whatever we have got and hand it over." They would make the search, necessarily; or he, Pegram, would.

Q. In that way you passed it on to them, in the way you described?

A. Exactly. I passed it on to them.

Q. You heard Mr. Pegram's testimony, did you, this morning, sitting here?

A. Yes.

Q. You heard what he said in regard to letters written by members of the firm? I mean letters not signed in the name of the firm, but written by various members of the firm in regard to business transactions in which the firm was interested?

A. Yes.

Q. Where would those letters be kept? For instance, say the letters signed by J. P. Morgan, your father?

A. The rule has always been in the office, ever since I have been there, since I first came and before that time, that letters on firm business are signed by J. P. Morgan & Company or Drexel, Morgan & Company, as it was then. Whether the individual partners sent personal letters with their own names, I do not know; I do not think it is done very often. I should think probably never.

Q. When did you say you went into the firm?

A. I went into Drexel, Morgan & Company in 1892, and it was changed to J. P. Morgan & Company in 1894.

Q. The firm here in New York?

A. Yes.

Q. You said 1894?

A. December 31, 1894, J. P. Morgan & Company was organized.

Q. That was the time you went in?

A. I went into Drexel, Morgan & Company in 1892 and J. P. Morgan & Company in 1894.

Q. Have you, or did you have, any personal knowledge at any time of any of the papers called for in the subpoena other than those that were produced?

A. No, not at all.

Q. Did you have any information at the time the transaction was going on of the papers that were produced?

A. No; at that time I was working in London.

Q. When were you working in London?

A. From January, 1898 until 1905.

Q. Your knowledge of the business and the manner of conducting the business, the personal knowledge you have testified to, does not cover the period prior to 1905?

A. It covers the period before and since.

Q. But not from 1901 to 1905?

A. Not the actual conduct of the office from day to day, no.

Q. Is there any partner of your firm now in New York who was in the firm from 1901 to 1905?

A. Yes.

Q. Who is that?

A. Temple Bowdoin.

Q. Any other?

A. W. B. Hamilton.

Q. Is that all?

A. I think that is all that were here from that time who are now in New York.

MR. DICKINSON: That is all.

MR. LINDABURY: No questions.

D. G. KERR,

was called as a witness on behalf of the United States, and having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Have you produced any papers in response to subpoena?

A. Yes.

Q. Mr. Kerr, in response to the subpoena to produce certain papers, you produce those which you herewith hand me, do you?

A. Yes.

MR. DICKINSON: I will ask that they be marked for identification.

(The papers referred to were thereupon marked "Government Exhibits 410, 411 and 412, for identification.")

By MR. COLTON:

Q. You have before you a copy of the subpoena, Mr. Kerr?

A. Yes.

Q. The first item called for in the subpoena is all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercial available ore on the Mesabi Range. Did you produce any paper in response to that?

MR. REED: He has to see what the number is.

MR. SEVERANCE: What is the number of that exhibit?

THE WITNESS: Exhibit No. 410.

By MR. COLTON:

Q. Is that the only paper you produced in response to the first request?

A. Yes, sir.

Q. The second request is, all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercial available ore on the Mesabi Range controlled by the various sub-

sidiaries of the United States Steel Corporation, acquired prior to January 1, 1902.

A. That is the statement over there.

MR. REED: That is the large statement of which a copy was submitted to counsel for the Government by counsel for the defendants several weeks ago, not as yet marked with any number for identification.

By MR. COLTON:

Q. Mr. Kerr, I call your attention to the fact that this request calls for the then known commercial available ore. Did you have any such papers as that in your files on the Mesabi Range?

A. No, sir.

Q. You have no such papers in your file?

A. No, sir; we have not. The only paper is submitted.

MR. REED: Exhibit No. 410?

THE WITNESS: Yes.

By MR. COLTON:

Q. You have examined your files for such papers?

A. I personally examined the files.

Q. All the files that are kept by the corporation here?

A. No, sir. I only examined the files in my own office.

Q. You received the papers that Mr. Gayley had?

A. Yes. I would assume that they were there.

MR. SEVERANCE: He succeeded Mr. Gayley.

By MR. COLTON:

Q. You succeeded Mr. Gayley?

A. Yes.

Q. And Mr. Gayley was the ore man of the Corporation so far as the United States Steel Corporation was concerned here in New York?

A. Yes, sir.

Q. And, so far as you know, you have no other ore data here in New York other than would be in your files?

A. I would not say that. There may be some minor statements scattered around from time to time, but that is where they would lodge finally. I would not say that I have all the data pertaining to ores of the corporation.

MR. REED: Mr. Colton only asked so far as you know.
THE WITNESS:. As far as I know.

By MR. COLTON:

Q. Do you know whether or not the Oliver Iron Mining Company has any of these papers: Please read the second request in the subpoena, and answer after reading.

A. Which one do you mean?

Q. I mean the subpoena addressed to the United States Steel Corporation, Oliver Iron Mining Company, W. J. Olcott, D. G. Kerr, and George D. Swift. Have you a copy of that subpoena before you?

A. Yes. This is the one.

Q. The first request you have read and answered. Now I ask you as to the second request, whether the Oliver Iron Mining Company has any such statements as that in its files as far as you know?

A. I do not know whether they have or have not.

MR. REED: Mr. Olcott will make the returns for the Oliver Company. He is coming to New York, but has not yet arrived.

MR. COLTON: I understand.

By MR. COLTON:

Q. The third request is for all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercial available ore on the Old Ranges. Have you produced anything in response to that?

A. Yes. Exhibit 410.

MR. REED: And 411.
THE WITNESS: That comes in later.
MR. REED: That refers to the same period, does it not?
THE WITNESS: Yes; to Hulst.

By MR. COLTON:

Q. In response to that you produce Government Exhibit for identification, No. 410?

A. Yes, sir.

MR. REED: And No. 411, Mr. Colton.

By MR. COLTON:

Q. And is Government Exhibit No. 411 for identification produced in response to the same request?

A. Yes, sir.

Q. Is that all the papers that you produce in response to request No. 3?

A. Yes, sir.

Q. And so far as your own file in New York is concerned, you have made thorough search of that file for all papers corresponding to that request?

A. I have, sir.

Q. Do you know whether the Oliver Iron Mining Company has papers relating to that?

A. I do not. I might say this is in response to a note sent the Oliver Iron Mining Company asking if they had any data regarding the Hulst and Sellwood estimates, and that is what I got in reply.

MR. REED: You refer to Exhibit No. 411?

THE WITNESS: Yes.

By MR. COLTON:

Q. The fourth item in it is:

"All data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercial available ore on the Old Ranges controlled by the various subsidiaries of the United States Steel Corporation prior to January 1, 1902." What do you state as to that?

A. That is exhibit 410; the same thing.

Q. You produce Government Exhibits Nos. 410 and 411 for identification in response to that?

A. Yes, sir.

Q. And those are the only papers that you know of?

A. Yes, sir.

MR. REED: Of course it is understood that this large statement tends to show the same facts, to some extent. Mr. Kerr will produce it, but I do not suppose you want it referred to in this case.

MR. COLTON: No; we are now speaking of current estimates made by the Corporation in the course of business.

This is something to be arrived at by an agreement of counsel, as I understand.

MR. REED: I simply did not want to leave room for any misunderstanding.

By MR. COLTON:

Q. Now, referring to the fifth item of the subpoena:

"All data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then commercial available ore in the Lake Superior district as a whole."

A. The Lake Superior District is referred to in No. 5? I have not got it marked that way.

Q. I suggest that you number the paragraphs of the subpoena for convenience of reference. Have you examined No. 5 now?

A. Yes, sir.

Q. Do you produce anything in response to that request?

A. No, sir; I do not.

Q. You have no reports as to the then known commercial available ore in the Lake Superior District?

A. No, sir; I have not.

Q. No estimates?

A. No, sir.

Q. Have you estimates covering a part of the Lake Superior District other than the United States Steel Corporation as of that date?

A. No, sir; I have not.

Q. Do you know whether the Oliver Iron Mining Company has such papers?

A. I do not.

Q. Next I refer you to the sixth request in the subpoena, for all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercial available ore in the Lake Superior District controlled by the various subsidiaries of the United States Steel Corporation, acquired prior to January 1, 1902.

A. I have nothing on that. This is the only thing—Exhibit No. 410. I assume that is all of them there.

Q. That is, Government Exhibits Nos. 410 and 411, for

identification? You make the same reply as to the preceding questions?

A. Yes.

Q. Referring again to Nos. 6 and 5, both, have you ever seen any such estimates or reports?

A. I have never seen any. I cannot say that I have ever seen any. I may have seen them in Pittsburg in the early days. I cannot swear definitely as to whether I have or not. I could not say whether I had or had not.

Q. You say, "in the early days." By "early days" what do you mean?

A. I mean when I was located in Pittsburgh; that is around 1901 and 1902, when I was there.

Q. You may have seen such estimates as this at that time?

A. I don't know. I cannot say that I have seen them.

Q. In whose custody would those estimates be?

A. Naturally in the custody of the Oliver Iron Mining Company.

Q. Do you know in whose custody they were at the time?

MR. SEVERANCE: He has not said he saw them. You are assuming he said definitely he saw them.

By MR. COLTON:

Q. If there are such reports?

A. If there are such reports, they would be in the custody of the Oliver Iron Mining Company.

Q. And Mr. Cole or Mr. Fraser or Mr. Olcott or Mr. Swift are the only ones that would be apt to be able to report in regard to it?

A. President Olcott or Mr. Swift of the Oliver Iron Mining Company.

Q. The papers would be in their possession?

A. I should say so.

MR. REED: You said, "Mr. Swift of the Oliver Iron Mining Company." Do you mean he is an officer of the company?

THE WITNESS: He is an officer of the company.

MR. SEVERANCE: He is secretary, is he not?

THE WITNESS: Secretary, yes.

By Mr. Colton:

Q. If you saw those statements you spoke of, about which you are not sure, you saw them in the office of the Oliver Iron Mining Company in Pittsburgh?

A. Yes; in the office of the Oliver Iron Mining Company, Pittsburgh.

Q. Would that be the same office as the office of the Carnegie Company?

A. The same building.

Q. (Continuing.) Or the Carnegie Steel Company?

A. The same building. They were connected very closely.

Q. Were such ore estimates, of that kind, kept both by the Carnegie Steel Company and by the Oliver Iron Mining Company?

A. I cannot say by whom they were kept at that date. I do not know whether they were kept jointly or otherwise.

Q. Were you connected with the ore in 1901?

A. With the distribution of ore, yes.

Q. And in that connection you became familiar with the custody of ore papers?

A. In the distribution of ore, yes. At that time I did not have anything to do with the purchase of properties, or the ore reservations.

(Whereupon a recess was taken until 2:15 o'clock p. m.)

AFTER RECESS

D. G. KERR,

the witness under examination at the taking of recess, resumed the stand.

DIRECT EXAMINATION (Continued),

By Mr. Colton:

Q. The last question I asked you related to No. 7, calling for all data, estimates or reports showing, at or about the time of the formation of the United States Steel Corporation,

the then known available commercial ore in sight on the Mesabi Range.

A. I have no data showing that.

Q. Do you know of, or have you ever seen, any data showing that?

A. I have not, to the best of my recollection.

Q. In regard to No. 6, the request read previously, you spoke of the possibility of having seen estimates therein referred to in Pittsburgh, in the control of the Oliver Iron Mining Company. Did you refer to a time prior to the formation of the United States Steel Corporation, at that time?

A. It is a very indistinct recollection. It was along about 1900 or 1901; I can not say, but I saw some estimates at that time. At least I think—it is a question in my mind; that is the better way to put it. I can not give you any exact date.

Q. Can you tell which officers at that time had charge of that character of estimates, provided you saw them?

A. Mr. Gayley was the one in charge.

Q. And Mr. Clemson?

A. I do not think he would have anything to do with that; nothing with the estimates.

Q. Mr. Gayley would be the primary man?

A. Yes, no question about it; Mr. Gayley was the man there in charge of the ore department of the Carnegie Steel, as well as an officer of the Oliver Mining Company.

Q. Who succeeded him in that capacity?

A. What capacity?

Q. In the capacity with the Oliver Mining Company and the Carnegie Steel; who succeeded him?

A. I succeeded him in Carnegie Steel after the formation of the Corporation.

Q. You do not recall whether those papers came into your possession at that time or not, or whether you had seen them after the time that Mr. Gayley was connected with the Carnegie interests and the Oliver interests, as distinguished from the vice-presidency of the United States Steel Corporation?

A. I do not remember.

Q. And those papers, if in existence now, would be kept in Pittsburgh or in Duluth, or where?

A. I would naturally say Duluth.

Q. That would be the natural place for them?

A. I should say that is the natural place for them.

Q. No. 8; all data, estimates and reports showing, at or about the time of the formation of the Steel Corporation the then known commercially available ore in sight on the Mesabi Range controlled by the various subsidaries of the United States Steel Corporation, acquired prior to January 1, 1902?

A. Exhibit No. 410.

Q. And 411; you produce those?

A. Yes.

Q. And those are the only papers that you have in your possession relating to that?

A. Yes.

Q. You noticed the insertion of the words "in sight" as contrasted with simply the then known commercially available ore?

A. I have not any papers, other than the ones I produce, showing either.

Q. Have you seen papers showing the then known commercially available ore on the Mesabi Range in sight as distinguished from commercially available ore?

A. No, sir; I have not.

Q. Would your answer to the preceding question, as to the possibility of having seen such estimates, be the same for commercially available ore in sight as for commercially available ore?

A. It would not make any difference.

Q. Nine; all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercially available ore in sight on the old ranges?

A. Exhibit 410, Hulst's report in reference to the Mesabi.

MR. REED: 411 has nothing to do with the old range?

THE WITNESS: No.

By MR. COLTON:

Q. 410 is the only one you produce in response to that?

A. Yes.

Q. And the only one you know of?

A. Yes.

Q. Ten; all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercially available ore in sight on the old ranges controlled by the various subsidiaries of the United States Steel Corporation, acquired prior to January 1, 1902?

A. Exhibit 410.

Q. Is that the only paper?

A. Yes.

Q. No. 11; all data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercially available ore in sight on the Lake Superior district?

A. I have no papers.

Q. You personally have not seen papers distinguishing ore in sight and commercially available ore at a given time?

A. I have not seen any paper showing either ore in sight or then known available ore, either way.

MR. REED: Except No. 410?

THE WITNESS: Yes, No. 410; that is all in there.

By MR. COLTON:

Q. All data, estimates and reports showing, at or about the time of the formation of the United States Steel Corporation, the then known commercially available ore in the Lake Superior district controlled by the various subsidiaries of the United States Steel Corporation, acquired prior to January 1, 1902?

A. What is that, No. 12?

Q. Yes.

A. What were you talking about before, 11? It was No. 11 you spoke of before, and I said we did not have any data on that. It was for No. 11 we submitted Exhibit No. 410.

(The pending question was repeated by the stenographer.)

THE WITNESS: 410; that is the only paper I have.

By MR. COLTON:

Q. No. 13; all ore estimates made by Sellwood, Hulst or others, at or about the time of the formation of the United States Steel Corporation, including all reports or estimates showing the then known commercially available ore in the

Lake Superior District, or the then known commercially available ore on the Mesabi Range, or the then known commercially available ore controlled by the various subsidiaries of the United States Steel Corporation, whether made in connection with the organization of the United States Steel Corporation, or with the valuation of the properties of the United States Steel Corporation, at or about the time of the Hodge suit or otherwise, and each and all of said estimates. What is your answer to that?

A. It is a question whether both these papers do not apply to that. They are all the papers I have on it. No. 410 and 411.

Q. Have you known at any time of any estimate, or have you seen at any time any estimate made by Mr. Sellwood, made at or about the time of the formation of the United States Steel Corporation?

A. Have I seen or known about it?

Q. Yes.

A. No, sir. I never saw it or heard of it until this suit was commenced.

Q. How about Hulst?

A. I never heard he made any estimate.

Q. Do you know whether he made estimates covering different portions of the ore property acquired by the United States Steel Corporation?

A. No, sir; I do not.

Q. Other than what you have given there?

A. Yes; that is understood.

MR. REED: It is not understood, as the question reads.

By MR. COLTON:

Q. Other than the ones you produce.

A. I do not.

Q. Did you know of that one prior to the time you produced it?

A. No, sir. Mr. Reed asked me if I had the data and I looked it up and found that I had not, and wired to Duluth and asked if they had, and that is what I got in response to the message to Duluth.

Q. That was some time ago?

A. February 26th, that I took it up with them.

MR. REED: You wrote to Duluth on the 26th of February?

THE WITNESS: I wrote to Duluth on the 26th of February, and that is the response or reply I got.

By MR. COLTON:

Q. No. 14; all ore estimates showing the estimated holdings of the United States Steel Corporation on the various ranges in the Lake Superior district, of known ore in sight at the time of the formation of the United States Steel Corporation or shortly thereafter, referred to in Mr. Gayley's testimony at pages 6579 and 6582, typewritten record, together with the various estimates made by the Oliver Mining Company's engineers as to the holdings of other parties than the subsidiaries of the United States Steel Corporation in the Lake Superior District, referred to by James Gayley in his testimony at page 6582, typewritten record. Have you made any search in respect to that?

A. Yes, I have.

Q. Do you produce any papers in response to that?

A. Exhibit 412 and Exhibit 410.

Q. In response to that you produce Exhibit 412, Estimate of Iron Ore Reserves in the Lake Superior Region as of January 1st, 1906, all Ranges?

A. Well, that one is dated; the rest are not. I give it to you as I got it from the files, and Exhibit 412 is the one.

Q. But you mentioned the others?

A. Oh, yes.

Q. That is the only paper you have ever seen that corresponds to the matters called for in any way in No. 14?

A. I have seen estimates made since the beginning of the suit on our ore reserves, and the outside people.

MR. REED: Of course you understand that there may have been some estimates made for the use of counsel in this suit after the suit was brought.

MR. COLTON: I am not asking about estimates that you have made for counsel in this suit.

MR. REED: Of course you will understand that is not referred to in the question.

MR. COLTON: It is current estimates prior to October 26th.

By Mr. Colton:

Q. I will read from the subpoena addressed to J. P. Morgan & Company and others, Government Exhibit 409. Under Nos. 1 and 2 you have no papers?

A. No, sir; I have not.

Q. No. 3?

A. No, sir; I have not.

Q. Have you ever seen any papers on that subject?

A. No, sir; I have not.

Q. No. 4; all correspondence and other memoranda relating to negotiations of the Hill ore lease, together with all reports made by or to the special committee consisting of Messrs. Gayley and Frick, said committee having been appointed to carry on negotiations with the Hill interests for the acquisition of the Hill ores. Have you any papers on that subject?

A. Is that No. 4?

Q. That is No. 4 in paragraph.

A. Mine reads "All correspondence or other matters relating to the Hill ore lease."

Q. Then when I asked you about No. 3 you did not understand to which one I referred? I will go back to No. 3, as to whether you produce any papers in response to No. 3, first. This is paragraph No. 3 in the subpoena as described, among the papers called for, referring to all reports and papers, correspondence and memoranda made by James Gayley or any other person to the United States Steel Corporation or any of its officers or subsidiaries in regard to the proposed acquisition of the Tennessee Coal & Iron Company prior to the acquisition by the United States Steel Corporation of the said Tennessee Coal & Iron Company.

A. I have no paper, and I have never seen any.

Q. Now, as to No. 4, referring to all correspondence or other memoranda relating to negotiations with the Hill interests for the acquisition of the Hill ores.

A. Our file on the Hill ores was turned over to Mr. Bolling, and he told me that he turned it over to you. I just gave him the complete file as I had it.

Q. As I understand your answer to No. 4, you turned over to counsel for the Steel Corporation, assuming it to be at

our request, or at the request of the Government, everything in your possession relating to that subject?

A. Yes.

MR. SEVERANCE: Both before and after the negotiation of the lease?

THE WITNESS: Yes. This request through Mr. Bolling for this file came up before I was subpoenaed.

By MR. COLTON:

Q. This request came to you some time ago?

A. Yes.

Q. And at that time you turned over all files that you had in New York on the subject?

A. Yes.

Q. Do you know of any other papers than those that you had in New York relating to that subject?

A. I do not know of any, sir.

Q. Would Mr. Gayley's papers have naturally been kept in New York in so far as they related to that subject?

A. I should think so; without a doubt.

Q. You have no papers as to No. 5?

A. No.

Q. No. 5 beginning "All agreements and understandings between John D. Rockefeller," and so forth?

A. We have none, sir.

Q. How about No. 6, the following paragraph?

A. We have none.

Q. No. 7?

A. None.

Q. Now as to No. 8. Do you produce anything in response to that?

A. None except what we have already produced. None except Government Exhibit No. 411 for identification.

Q. And your answer in regard to whether you had seen any such papers would be the same—

A. The same as previous; yes.

Q. As to No. 9; do you produce any papers in response to No. 9?

A. None.

Q. Are reports and ore statements made by the various subsidiaries of the United States Steel Corporation under your control?

A. Yes, sir.

MR. COLTON: That is all I wish from Mr. Kerr at this time.

CROSS EXAMINATION,

By MR. REED:

Q. What was your position prior to 1900?

A. Superintendent of blast furnaces, Edgar Thomson Works.

Q. During what time?

A. From 1892 to 1900.

Q. When your position was changed, what office did you take?

A. Ore agent, Carnegie Steel Company.

Q. What did you have to do as ore agent? What were your duties?

A. To look after the distribution of raw material to the various consuming plants of the Carnegie Steel Company.

Q. Did you have anything to do with the leasing of ore lands?

A. Nothing whatever.

Q. Did you have anything to do with royalties?

A. Nothing whatever.

Q. Or with the mining of ore?

A. No, sir.

Q. Or the Lake shipments?

A. Indirectly with Lake shipments; yes, sir.

Q. Your duties related only to the distribution of the ore between the different plants?

A. Yes.

Q. And you were only concerned in the Lake shipments as they affected that distribution?

A. That is all.

Q. And in 1901, on the formation of the United States Steel Corporation, were your duties extended at all?

A. They were extended, to become ore agent of the Illinois Steel Company, the National Tube and the American Steel & Wire.

Q. How long were you ore agent of those companies? Until what time?

A. January, 1909.

Q. While you were ore agent, did you have anything to do with the leasing of the ore properties, or the mining operations on the ranges, or the amounts of royalty paid in the Northwest?

A. Nothing with reference to royalty. Nothing with reference to leasing. As far as mining is concerned, we merely gave them a schedule of our requirements.

Q. You gave the mining men a schedule of your requirements?

A. Yes; and they made their operations accordingly.

Q. So that your connection with the leasing of ore dates only from 1909?

A. Yes, sir.

Q. You did not come to New York until 1909?

A. January 1, 1909.

MR. REED: That is all.

(Whereupon, an adjournment was taken until Tuesday, March 18, 1913, at 10:30 o'clock a. m.)

FIFTY-FIRST DAY,

EMPIRE BUILDING,
71 Broadway, New York City.

TUESDAY, March 18, 1913.

Before Special Examiner John Arthur Brown.

Present on behalf of the United States, Mr. Dickinson and Mr. Colton.

Present on behalf of the Defendants, Mr. Lindabury, Mr. Severance, Mr. Bolling, Mr. Reed and Mr. Cuthell.

MR. DICKINSON: The Government offers in evidence the paper heretofore marked "Government Exhibit, Kerr, No. 410 for identification," consisting of a letter dated April 25, 1901, from the First Vice-President of the United States Steel Corporation in regard to ore reserves owned or controlled by the United States Steel Corporation, enclosing ore reserve estimate of the United States Steel Corporation, dated April 25, 1901.

We ask counsel to stipulate that that letter was signed by Mr. Gayley. The copy does not show any signature. We do not want to recall him.

MR. REED: For the purpose of this case, we admit that the letter of April 25, 1901, just offered in evidence was signed by Mr. James Gayley and sent to Mr. C. M. Schwab.

(The paper referred to was thereupon marked "Government Exhibit No. 410, March 18, 1913.")

MR. DICKINSON: The Government offers in evidence paper heretofore marked "Government Exhibit, Kerr, No. 411 for identification," consisting of a letter from Mr. Nelson P. Hulst to Mr. James Gayley, of February 28, 1901, with a telegram from Mr. Gayley to Mr. Hulst of the same date, and a telegram from Mr. Gayley to Mr. Hulst of February 6, 1901.

(The papers above referred to were thereupon marked "Government Exhibit No. 411, March 18, 1913.")

MR. DICKINSON: The Government also offers in evidence paper heretofore marked "Government Exhibit No. 413 for identification," entitled "Summaries of Ore Reserves, January 1, 1908, exclusive of Hill ores, Lake Superior Ranges," which, in response to a request of the Government, is furnished by the United States Steel Corporation, the same being a detailed revised estimate, the total of which was furnished by the United States Steel Corporation to the Bureau of Corporations in the course of its investigations, in April, 1909.

(The paper referred to was thereupon marked "Government Exhibit No. 413, March 18, 1913.")

MR. DICKINSON: It is agreed by counsel for the Government and Messrs. Lindabury, Depue & Faulks for the defendants represented by them, subject to objection by the defendants that the same is irrelevant and immaterial, that if R. A. Berger were called he would testify that he was assistant secretary and assistant treasurer of the American Can Company; that D. G. Reid was a director of the American Can Company in 1901 and on or about April 12, 1905, on or about December 1, 1908, and on October 26, 1911; and that the minutes of the meetings of the board of directors of the company show that Mr. Reid was a director during each of said years; and that there was not always a directors' meeting on the dates mentioned.

Referring to Government Exhibit No. 365 for identification, being a pamphlet entitled "Department of the Interior, U. S. Geological Survey, George Otis Smith," and so forth, and Government Exhibit No. 364 for identification, being a work entitled "Department of the Interior, U. S. Geological Survey, George Otis Smith," and Government Exhibit No. 369 for identification, being a pamphlet entitled "Department of the Interior U. S. Geological Survey, Charles D. Walcott, director," which pamphlets the petitioner produced at the hearing of this cause on January 30, 1913, and offered in evidence certain parts thereof, as the same appear in the transcript of record, Volume VIII, pages 3364, 3366

and 3369, the petitioner now offers in evidence said pamphlets in their entirety.

MR. REED: The offers of these three pamphlets are objected to as incompetent, being hearsay; and particular objection is made to the offer of the introductory matter in the pamphlets, and to the discussions which are other than statistical, and to statements of fact and of opinion by the authors of the pamphlets. Exhibit No. 364 is further specially objected to for the reason that it appears to have been published by the complainant after the institution of this suit.

MR. COLTON: It is agreed between counsel for the petitioner and for the defendants represented by Lindabury, Depue & Faulks, that J. J. Campbell, assistant secretary of the Carnegie Steel Company, if present, would testify that all three copies of the original traffic agreement between the Carnegie Company and the Oliver-Snyder Company on the one part and the Federal Steel Company on the other part, dated July 9, 1900, covering rebate of 40 cents on rate from points east of the main line of the Iron Range Railroad, were destroyed November 5, 1901.

WILLIAM J. OLCOTT,

a witness called on behalf of the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. COLTON:

Q. Have you a copy of your subpoena before you, Mr. Olcott?

A. No, sir; I have not. I have a copy of the telegram that brought me here.

Q. We will take that up first. I understand that you did not receive a copy of the subpoena until you reached New York.

A. I did not have time, because I was wired to come here. This is the wire that brought me here. (Producing telegram.)

Q. Yes. We will have that identified.

(The telegram referred to was thereupon marked "Government Exhibit No. 414, for identification.")

By Mr. Colton:

Q. Mr. Bolling, pursuant to an arrangement between himself and me, sent the following telegram to you, which is marked "Government Exhibit No. 414, for identification."

"Subpoena in Government suit directed to yourself, myself and others, calls for all estimates showing ore holdings of the United States Steel Corporation and others, as follows:

"First. Estimate showing the tonnage of ore supposed to be contained in holdings of the United States Steel Corporation on or about April 1, 1901, according to best information available about that time, and specially of Sellwood and Hulst estimates.

"Second. Estimates showing holdings of the Corporation according to the best information available at the time the bill was filed, namely October 26, 1911.

Please search your records for such papers immediately, and arrange to be here with them next Monday, March 17, if possible.

"Signed D. G. Kerr."

What papers do you produce in response to that telegram, Mr. Olcott?

A. I did not bring any, for the reason that upon receipt of this telegram I gave instructions to our office force to go through all the files and see if they could find any such estimate as referred to in this telegram as ore estimate on or about April 1, 1901. They went through all of the files beginning the latter part of 1899 down to April, 1901, and they could find no estimates. All they could find was the letter from Dr. Hulst, copy of which you have here.

Q. Did they go farther than April 1, 1901, in their search?

A. I think they did; I can not say the exact date, but it was to see if we could find any such estimates.

Q. Were those files under your custody, Mr. Olcott?

A. They were in our office, the office of the Oliver Mining Company. It was the file of Dr. Hulst's correspondence.

Q. Did you have separate search made for the estimates showing the tonnage of ore supposed to be contained in the holdings of the United States Steel Corporation on or about April 1st, 1901, according to the best information available at that time?

A. I beg your pardon; 1901?

Q. Yes.

A. We did. This search was made in our engineering department, where all these estimates were kept. We were unable to find any, and I know of no estimate that was made as to ore holdings of 1901.

Q. Are you familiar with the way in which the files were kept of the company?

A. Yes, somewhat.

Q. How is the ore file kept?

Q. I beg your pardon?

Q. How is your ore file kept?

A. Our engineering department has a file of all the estimates that are made in regard to ore. That is kept in our engineering department.

A. And the report that you received from your engineering department was that there were no estimates for 1901?

A. They have no estimates that they know of, and they do not know of any having been made as to 1901.

Q. Did you have an examination made for any estimate for 1902?

A. They looked all through for everything, in the engineering department. Our engineering department told me that they have no knowledge of any estimate being made by the Oliver Mining Company to show the holdings of the Corporation, of 1901.

Q. Do you have any knowledge of any such estimates yourself?

A. I do not. The only estimates that I know of, or have knowledge of, that pertain to the holdings of 1901 of the Oliver Mining Company and the Steeel Corporation, and as to independent companies, are statements that were made since this suit was begun, under instructions from our attorneys.

MR. REED: It is understood that you are not asking for any estimate made up for us?

MR. COLTON: No, not special estimates.

THE WITNESS: That is the only information we have.

By MR. COLTON:

Q. Have you seen any estimates, other than those that were made since this suit was begun, pertaining to the year 1901?

A. I have not.

Q. Now, taking up the second request in the telegram, estimates showing holdings of the United States Steel Corporation, according to the best available informaion, at the time the bill was filed, namely October 26, 1911. What search did you make for such estimates?

A. The record that we have nearest to October 26, 1911, is our reserve record of 1912.

Q. Did you have any current estimates October 26, 1911, and preceding that date?

A. No, we make our estimates up, as a rule, either once every two years, or sometimes each succeeding year. The first estimates that we have any record of were made in 1904. The second was in 1906, the third in 1908, the fourth in 1909, the fifth in 1911 and the last in 1912, January 1, 1912.

Q. A copy of all these estimates is sent on to the Corporation here?

A. Yes.

MR. LINDABURY: That is what I showed you yesterday, except that we did not have 1904.

THE WITNESS: 1904 is not here.

MR. REED: There is no 1905?

THE WITNESS: 1904 and 1906.

By MR. COLTON:

Q. You do not have it here?

A. We do not seem to have it here, but I know there was one made at that time. We telegraphed to find if we had one and the first we had here was 1906. We have one of the year 1905, too.

MR. DICKINSON: You did not give that. You said 1904 and 1906.

THE WITNESS: I think there is one in 1905, and I have in mind that we had one in 1904, and I wired to our engineering department to see if we had one, and found that we had one in 1904.

MR. LINDABURY: That is in Duluth?

THE WITNESS: That is in Duluth. They have not any here, I understand.

By MR. COLTON:

Q. That is the general method by which you make your ore estimates, biennially, excepting that once in a while you have had them annually?

A. It was first biennially, but now we have 1911 and 1912.

Q. This system of biennial and occasionally annual estimates by the Corporation began in 1904?

A. Yes.

Q. And during the years 1901 to 1904 inclusive, you know of no current estimates?

A. I do not know of any.

Q. Do you know of any current data kept during that period, from which estimates could be computed?

A. No, sir; I do not.

Q. Would you have estimates for the various mines owned by the Corporation during that period—I mean your engineering department?

A. We might not have for all of them. We did not get any together, and I do not know of any. We may have had some where we purchased mines or something of that kind, but no detailed or complete statement was made previous to 1904, that I know of.

Q. I want to direct your specific attention to this question: Do you know of any estimate made by Mr. Hulst shortly after the formation of the Corporation?

A. I do not. I never saw it, and I don't know anything about it.

Q. You never saw that?

A. No, sir; I never saw it. The first that I ever knew

of any estimate being made by either Mr. Hulst or Mr. Sellwood was when I received this telegram (referring to Government Exhibit No. 414 for identification.)

MR. LINDABURY: The first you knew or heard of it?

THE WITNESS: The first I knew or heard of it.

CROSS EXAMINATION.

By MR. REED:

Q. The statement offered in evidence by the Government this morning, showing the ore reserves as of 1908, exclusive of Hill ores, includes large tonnages of ores marked "Silicious Washable Ores," and very large tonnages marked "Silicious Non-Washable Ores." I wish you would describe to us what kind of ores are included under those headings.

A. The Silicious washable ores cover ores that are found in the western end of the Mesabi Range, and average about 45 per cent iron, with a large amount of free silicon. In order to make this ore merchantable, it had to be washed, and in 1910 we started washing these ores in a large concentrating plant, and have used those ores since. By washing them we eliminate the greater portion of the sand and make this ore merchantable.

Q. In doing that you necessarily reduce the tonnage?

A. You do.

Q. The product of your washing plant, I assume, would not be nearly so large as the tonnage of crude washable ore?

A. It takes about two tons of crude ore to make one of standard.

Q. Is that silicious washable ore merchantable in its natural state?

A. It is not.

Q. Is it commercially available in its natural state, as the words "commercially available" are generally used?

A. I presume when you say "commercially available" you mean ore that can be sold as it is. I suppose that is what they mean.

Q. Yes.

A. No, it is not merchantable.

Q. Under the caption of "Silicious Non-Washable Ores," what kind of ores are included?

A. This includes a very large tonnage of ore where the iron runs down to about 42 per cent, but the silicon is in such a form that it can not be washed. It is not possible by any known method to make this ore merchantable.

Q. What part of the range is that found on mostly?

A. It is found on all parts of the range.

Q. Is that ore merchantable?

A. Not at all.

Q. If you had that ore at the docks at Lake Erie ports could you sell it?

A. No, sir.

Q. In your statement of standard Bessemer and standard non-Bessemer ore, how far down in the scale of percentage of iron content do they go?

A. We take in all ore that analyzes 49 per cent and upwards.

MR. COLTON: I object to that, because I have not gone into any examination in regard to estimates, and it is not specified which estimate he is speaking about. Are you referring to this 1908 estimate?

MR. LINDABURY: No, the whole of them.

MR. COLTON: I do not think that is true of the earlier estimates at all.

MR. REED: I will ask him as to which it is true, as to which of these ore reserves.

MR. COLTON: We have only called on Mr. Olcott to produce papers, and we do not think you should go into that side of your case at this time. In fact, Mr. Olcott testified nothing in regard to that paper. It was not introduced by him.

MR. LINDABURY: What objection have you to his stating the facts?

MR. REED: If they are not proved we would have to stipulate about it, and then you would have to recall him to prove it, and we would have to examine him in this way.

MR. LINDABURY: We have produced them with that idea. If you do not want to offer them in evidence, and we supposed you would want to, this witness has already been asked about them by you in a way to identify them.

MR. COLTON: No; the theory was that we would recall Mr. Gayley, if it was necessary to prove any of the documents. I do not want to make all of your ore experts our witnesses.

MR. REED: But you have asked him about the ore reserve books and what years they were published in, and what estimates were made. Now we want to show simply what estimates they were made of.

MR. COLTON: Suppose you confined that to the 1908 estimate. Are you speaking of that particular estimate?

MR. REED: I have spoken of that particular estimate, and he seems to have answered as to all. I will withdraw the last question and I will ask this question:

By MR. REED:

Q. Do those ore reserves of which you have spoken, any of them, distinguish between commercially available or merchantable ore and ore that is not commercially available or merchantable?

A. They do not.

MR. COLTON: I have a letter here from Mr. E. T. Stotesbury, which I offer in evidence with the consent of counsel for the Defendants represented by Messrs. Lindabury, Depue & Faulks, and it is stipulated that the same shall have the same force and effect as if Mr. Stotesbury were present and swore to the matters therein stated. I will read it into the record instead of marking it.

"Chestnut & Fifth Sts.,

PHILADELPHIA, March 17, 1913.

DEAR SIR:

In reply to your telegram of March 13th, I beg to advise you, from information I have received from the various Companies, that

I was elected a Director of the Penna. Steel Co. May 1, 1901, and have held the office of Director since that date.

I was elected a Director of The Penna. Steel Co. on March 11, 1902, and have been a Director since that date.

I was elected a Director of the Phoenix Iron Co. on October 21, 1899, and am still a Director.

I was elected a Director of the Bethlehem Steel Co. April 20, 1899, and resigned September 9, 1902.

I was elected a Director of the Cambria Steel Co. Nov. 18, 1898, and am still a Director.

I was elected a Director of the Cambria Iron Co. January 21, 1896, and am still a Director.

Trusting the above will give you the information desired, I am

Yours very truly,
E. T. STOTESBURY.

HENRY E. COLTON, Esq.,
Special Asst. to the Attorney Genl.
Room 2015, 71 Broadway, N. Y.

STIPULATION.

It is hereby stipulated and agreed between counsel for petitioner and for the defendants represented by Messrs. Lindabury, Depue & Faulks that, shortly after the dinner given by Judge Gary on November 20, 1907, to the leading representatives of the iron and steel industries, there was, pursuant to a resolution passed at that dinner, a general committee appointed, as follows:

Chairman, E. H. Gary, Chairman United States Steel Corporation.
W. E. Corey, President United States Steel Corporation.
Powell Stackhouse, President Cambria Steel Co.
E. C. Felton, President Pennsylvania Steel Company.
C. M. Schwab, Bethlehem Steel Company.
Willis L. King, Jones & Laughlin Steel Co.
Edward Bailey, President Central Iron & Steel Company.

That shortly thereafter, and prior to December 26, 1907, the general committee appointed the following sub-committees:

ORE AND PIG IRON.

CHAIRMAN:
W. E. Corey, United States Steel Corporation.
W. P. Snyder, Shenango Furnace Co.

Samuel Mather, Pickands, Mather & Co.
J. G. Butler, Jr., Bessemer Pig Iron Association.
John A. Topping, Republic Iron & Steel Co.
B. F. Fackenthal, Jr., Thomas Iron Co.
J. C. Maben, Sloss-Sheffield Iron & Steel Co.

Rails and Billets.

Chairman:
E. C. Felton, Pennsylvania Steel Co.
E. J. Buffington, Illinois Steel Co.
E. A. S. Clarke, Lackawanna Steel Co.
T. J. Drummond, Dominion Iron & Steel Co.
Howard Wood, Alan Wood Iron & Steel Co.

Structural Material.

Chairman:
C. M. Schwab, Bethlehem Steel Co.
Powell Stackhouse, Cambria Steel Co.
Willis L. King, Jones & Laughlin Steel Co.
E. J. Buffington, Illinois Steel Co.

Plates.

Chairman:
Powell Stackhouse, Cambria Steel Co.
Edward Bailey, Central Iron & Steel Co.
A. F. Huston, Lukens Iron & Steel Co.
W. P. Worth, Worth Bros. Co.
A. C. Dinkey, Carnegie Steel Co.

Steel Bars.

Chairman:
Willis L. King, Jones & Laughlin Steel Co.
John A. Topping, Republic Iron & Steel Co.
W. G. Park, Crucible Steel Co., of America.
A. C. Dinkey, Carnegie Steel Co.

Pipe and Tubular Goods.

Chairman:
W. B. Schiller, National Tube Co.
C. R. Hubbard, Wheeling Steel & Iron Co.
J. A. Campbell, Youngstown Sheet & Tube Co.
F. C. Smink, Reading Iron Co.

Sheets and Tin Plate.

Chairman:
I. N. Scott, La Belle Iron Works.
C. W. Bray, American Sheet & Tin Plate Co.
Charles Hart, Inland Steel Co.

Wire Products.

Chairman:
W. P. Palmer, American Steel & Wire Co.
Wallace H. Rowe, Pittsburg Steel Co.
Chas. G. Roebling, John A. Roebling's Sons Co.
O. H. Hutchinson, Grand Crossing Tack Co.

That Judge Gary, in notifying members of the sub-committees of their appointment, wrote as follows:

"In the appointment of sub-committees, the members of the general committee have used their best judgment in distributing responsibility amongst the different lines of business confining the membership to as small a number as seems practicable. It is hoped everyone who has been appointed will cheerfully serve and will attend and participate in the considerations of the respective committees whenever called together by the chairmen. It seems desirous that the committees meet in the very near future, and as frequently as the interests of the trade may demand. While it is advisable that no agreements contrary to the law be entered into, there is no objection to frequent consultations for the purpose of receiving full information and for the frank interchange of opinions concerning the business interests of all.

The general committee will be pleased to receive information or give advice at any time concerning any subject which may be brought before the committee.

The attitude and disposition of the iron and steel makers of the country, it is believed, meets with the general approval of the public.

It is hoped to meet again for dinner and social intercourse some time in the near future, perhaps early in February."

It is further stipulated that from time to time thereafter changes were made in the personnel of the sub-committees, but that as finally constituted the sub-committees stood as follows:

ORE AND PIG IRON.

CHAIRMAN:

W. E. Corey, United States Steel Corporation,
W. P. Snyder, Shenango Furnace Co.
Samuel Mather, Pickands, Mather & Co.
J. G. Butler, Jr., Bessemer Pig Iron Association.
John A. Topping, Republic Iron & Steel Co.
B. F. Fackenthal, Jr., Thomas Iron Co.
J. C. Maben, Sloss-Sheffield Steel & Iron Co.
W. A. Rogers, Buffalo & Susquehanna Iron Co.
Frank S. Witherbee, 2 Rector Street, New York City.
E. S. Cook, Warwick Iron & Steel Co.
Charles H. Zehnder, Allegheny Ore & Iron Co.

BILLETS AND SHEET BARS.

CHAIRMAN:

John A. Topping, Republic Iron & Steel Co.
E. C. Felton, Pennsylvania Steel Co.
A. C. Dinkey, Carnegie Steel Co.
E. A. S. Clarke, Lackawanna Steel Co.
Willis L. King, Jones & Laughlin Steel Co.
J. A. Campbell, Youngstown Sheet & Tube Co.
Howard Wood, Alan Wood Iron & Steel Co.

RAILS AND BILLETS.

CHAIRMAN:

E. C. Felton, Pennsylvania Steel Company.

E. J. Buffington, Illinois Steel Co.
E. A. S. Clarke, Lackawanna Steel Co.
T. J. Drummond, Dominion Iron & Steel Co., Ltd.
Howard Wood, Alan Wood Iron & Steel Co.

Structural Material.

Chairman:
C. M. Schwab, Bethlehem Steel Co.
Powell Stackhouse, Cambria Steel Co.
Willis L. King, Jones & Laughlin Steel Co.
E. J. Buffington, Illinois Steel Co.

Plates.

Chairman:
Powell Stackhouse, Cambria Steel Company.
Edward Bailey, Central Iron & Steel Co.
A. F. Huston, Lukens Iron & Steel Co.
W. P. Worth, Worth Bros. Co.
A. C. Dinkey, Carnegie Steel Co.

Steel Bars.

Chairman:
Willis L. King, Jones & Laughlin Steel Co.
John A. Topping, Republic Iron & Steel Co.
W. G. Park, Crucible Steel Company of America.
A. C. Dinkey, Carnegie Steel Company.
Fred Krebs, Cambria Steel Co.

Pipes and Tubular Goods.

Chairman:
W. B. Schiller, National Tube Co.
C. R. Hubbard, Wheeling Steel & Iron Co.
J. A. Campbell, Youngstown Sheet & Tube Co.
F. C. Smink, Reading Iron Co.
I. M. Scott, La Belle Iron Works.

SHEETS AND TIN PLATE.

CHAIRMAN:

I. M. Scott, La Belle Iron Works.
C. M. Bray, American Sheet & Tin Plate Co.
Charles Hart, Inland Steel Co.
Thomas K. Niedringhaus, National Enameling & Stamping Co.
J. A. Campbell, Youngstown Sheet & Tube Co.

WIRE PRODUCTS.

CHAIRMAN:

W. P. Palmer, American Steel & Wire Co.
Wallace H. Rowe, Pittsburg Steel Co.
Charles G. Roebling, John A. Roebling's Sons Co.
O. H. Hutchinson, Grand Crossing Tack Co.

LINDABURY, DEPUE & FAULKS,
J. M. DICKINSON,
HENRY E. COLTON,
Special Assistants to the Attorney General.

(Whereupon, an adjournment was taken to tomorrow, Wednesday, March 19, 1913, at 2:00 o'clock p. m.)

FIFTY-SECOND DAY,

EMPIRE BUILDING,
71 BROADWAY, New York City.

WEDNESDAY, MARCH 19, 1913.

Before SPECIAL EXAMINER HENRY P. BROWN.

Present on behalf of the United States, MR. DICKINSON and MR. COLTON:

Present on behalf of the Defendants, MR. SEVERANCE, MR. BOLLING and MR. GEORGE WELWOOD MURRAY.

STIPULATION.

The Petitioner offers in evidence Government Exhibit No. 412 for identification, consisting of Estimate of Iron Ore Reserves in the Lake Superior Ranges as at January 1, 1906, all Ranges, together with detailed estimate for each of said Ranges, thereto attached.

It is agreed between the Petitioner and the Defendants represented by Messrs. Lindabury, Depue & Faulks, that said estimates were found in the United States Steel Corporation's ore files; that the estimates in question were prepared by officers and engineers of the Oliver Iron Mining Company; that the detailed estimates from which said estimates were prepared, so far as companies and mines other than those of the Corporation are concerned, are stated on the face of the memoranda from which the attached summaries were prepared, to be approximate only.

New York, March 18, 1913.

J. M. DICKINSON,
HENRY E. COLTON,
Special Assistants to the Attorney General.
LINDABURY, DEPUE & FAULKS,
By D. A. REED.

(The tables referred to in the above stipulation were thereupon marked "Government Exhibit No. 412, March 18, 1913" and will be found in the volume of exhibits.)

STIPULATION.

IT IS STIPULATED by and between the Petitioner and the Defendants represented by Messrs. Lindabury, Depue & Faulks, as follows:

That the pamphlets entitled respectively, Appraisal of Mining Properties of Michigan by the State Board of Tax Commissioners Under provisions of Act No. 114, of the Public Acts of 1911. Lansing, Michigan, Wynkoop, Hallenbeck Crawford Co., State Printers 1911, and, Summary of Data of Iron Districts, the pages of said pamphlets being numbered consecutively from 1 to 185, are offered in evidence in behalf of the Petitioner, subject to objection to competency and relevancy; that the following portions of the above entitled reports need not be printed unless counsel for either side requests it, to wit, pages 15 to 33 inclusive; page 34, beginning with the words "King Philip Company," through the words " 'unearned increment,' " 66 to 185 inclusive.

Dated New York, March 18, 1913.

J. M. DICKINSON,
HENRY E. COLTON,
Special Assistants to the Attorney General.
LINDABURY, DEPUE & FAULKS,
By D. A. REED.

(The pamphlets referred to in the above stipulation were thereupon marked "Government Exhibit No. 415," and will be found in the volume of exhibits.)

STIPULATION.

IT IS STIPULATED by and between the Petitioner and the Defendants represented by Messrs. Lindabury, Depue & Faulks, as follows:

The following Contracts and Agreements, to wit:

Agreement of November 1st, 1905, between the Carnegie Steel Company and the Standard Steel Car Company;

Agreement of July 15, 1905, between the Carnegie Steel Company and Illinois Steel Company and American Steel Foundries Company;

Agreement of June 30, 1909, between the Carnegie Steel Company and the Oliver Iron & Steel Company;

Agreement of February 18, 1904, between the Carnegie Steel Company and American Locomotive Company;

Contract between the Carnegie Steel Company and American Locomotive Company of November 15, 1904;

Agreement of December 30, 1904, between the American Bridge Company and the Union Pacific Railroad Company, *et al.;*

Agreement contained in letter of July 28, 1908, from the American Bridge Company to W. V. S. Thorne, and the reply thereto of July 30, 1908; are offered in evidence in behalf of the Petitioner subject to objection to competency and relevancy; that said Contracts were entered into and operated under.

Dated, New York, March 19th, 1913.

J. M. DICKINSON,
HENRY E. COLTON,
BARTON CORNEAU,
Special Assistants to the Attorney General.
LINDABURY, DEPUE & FAULKS,
Solicitors.

(The agreements referred to in the above stipulation were thereupon marked "Government Exhibit No. 416, March 19, 1913" to "Government Exhibit No. 422, March 19, 1913," and will be found in the volume of exhibits.)

STIPULATION.

MR. DICKINSON: It is stipulated between counsel for the Government and Messrs. Lindabury, Depue & Faulks for the Defendants represented by them, that the following documents were called for by subpoena or request:

1. Original syndicate agreements of American Tin Plate Company, American Sheet Steel Company, American Steel Hoop Company and National Steel Company.

2. All contracts or agreements restricting or limiting the business to be pursued by the vendors, or any of them, of the plants, properties or stocks acquired by the National Steel Company, American Sheet Steel Company, American Tin Plate Company, American Steel Hoop Company, made or entered into with any of said companies, or the promoters, officers or agents of any of said companies at or about the formation of said companies.

3. Notice of January 7, 1899, by J. W. Gates, A. L. Clifford, F. Baackes, E. H. Gary, and others, to preferred and common stockholders of the American Steel & Wire Company, concerning the acquisition of certain wire plants. (This is the notice referred to in Request No. 6 contained in letter of Dec. 4, 1912, to Mr. Lindabury.)

4. Notice of January 7, 1899, by J. W. Seligman & Company, to holders of the preferred and common stock of the American Steel & Wire Company. (This is the notice referred to in Request No. 7 contained in letter of Dec. 4, 1912, to Mr. Lindabury.)

5. Agreement dated January 5, 1899, between John W. Gates, Isaac Ellwood and Frederick P. Voorhees, in respect to the American Steel & Wire Company. (This is the agreement referred to in Request No. 8 contained in letter of Dec. 4, 1912, to Mr. Lindabury.)

6. Balance Sheet of the Carnegie Steel Company, Limited, of December 31, 1899. (This is the balance sheet referred to in Request No. 36 contained in letter of December 4, 1912, to Mr. Lindabury.)

7. Balance Sheet of the Carnegie Steel Company, Limited, of March 1, 1900. (This is the balance sheet referred to in Request No. 37, contained in letter of Dec. 4, 1912, to Mr. Lindabury.)

8. All contracts, agreements, papers and correspondence

between the United States Steel Corporation or any of its subsidiaries with foreign producers, as to the price of rails in neutral markets, together with report of Committee appointed November 1, 1904. (McRae's Report, 3837). (These are the papers, etc., referred to in Paragraph No. 1 of Subpoena No. 10.)

9. All contracts, agreements or understandings relating to the rail pool, and all contracts, agreements and understandings relating to the restoration and maintenance of the prices and the regulation of the output of heavy steel rails, made or entered into by the United States Steel Corporation or any of its subsidiary companies and other makers of heavy steel rails between the year 1887 and January 1, 1912, together with all papers, correspondence, memoranda and data relating thereto. (The above documents are referred to in Paragraph 16 of Subpoena No. 10.)

10. All contracts, agreements or understandings relating to the maintenance of the price of structural material, or to the control of the output thereof, made or entered into by the United States Steel Corporation or any of its subsidiary companies or other makers of structural material, between 1895 and January 1, 1912, together with all papers, correspondence, memoranda and data relating thereto. (The above documents are referred to in Paragraph 17 of Subpoena No. 10.)

11. All contracts, agreements or understandings relating to the maintenance of the price of steel billets or the control of the output thereof, made or entered into by the United States Steel Corporation or any of its subsidiary companies and other makers of steel billets, between the year 1895 and January 1, 1912; together with all papers, correspondence, memoranda and data relating thereto. (The above documents are referred to in Paragraph 18 of Subpoena No. 10.)

12. All contracts, agreements or understandings relating to the maintenance of the price of steel plates or the control of the output thereof, made or entered into by the United States Steel Corporation or any of its subsidiary companies, and other makers of steel plates, between the year 1895 and January 1, 1912; together with all papers, correspondence, mem-

oranda and data relating thereto. (The above documents are referred to in Paragraph 19 of Subpœna No. 10.)

13. All contracts, agreements or understandings relating to the maintenance of the price of steel bars, or the control of the output thereof, made or entered into by the United States Steel Corporation or any of its subbsidiary companies and other makers of steel bars, between the year 1895 and January 1, 1912, together with all papers, correspondence, memoranda and data relating thereto. (The above documents are referred to in Paragraph 20 of Subpœna No. 10.)

Said subpœnas and requests calling for the above documents were handed to counsel for the Defendants represented by Messrs Lindabury, Depue & Faulks in the course of the presentation of the Petitioner's case; and pursuant to an arrangement between counsel for said defendants and counsel for the Petitioner, search was made by the appropriate officers of the United States Steel Corporation or its subsidiaries, or the several defendants, as the case might be, and said parties reported that they had searched for the papers above called for, and that said papers could not be found.

It is further stipulated that said reports be accepted as equivalent to testimony to that effect given by said parties respectively.

FOREST D. SIMMONS

was called as a witness on behalf of the United States, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dickinson:

Q. What is your age?

A. Thirty-two.

Q. Where do you reside?

A. I am living in New York at the present time.

Q. Temporarily?

A. Temporarily; yes, sir.

Q. Where is your regular home?

A. My home is in Kalamazoo, Michigan.

Q. State whether or not you are in the employment of the Department of Justice.

A. I am.

Q. And you have been for how long?

A. I have been in the employment of the Department of Justice for about three years and a half.

Q. Mr. Simmons, you are a member of the Bar, are you not?

A. Yes.

Q. You have been admitted to the Bar?

A. Yes, sir.

Q. You were requested, Mr. Simmons, to prepare tables showing in what corporations the various directors of the United States Steel Corporation were directors. Have you prepared such a table in accordance with that request?

A. I have.

Q. Are these the tables? (Indicating.)

A. Yes, sir.

MR. DICKINSON: I will have these marked for identification.

(The tables were thereupon marked "Government Exhibit No. 423-a" to "Government Exhibit No. 423-x for identification".)

By MR. DICKINSON:

Q. For illustration, Mr. Simmons, take the first one, George F. Baker. I see there are various columns there, the first being the names of companies in which the party was a director or officer. Does that set out and indicate the companies in which Mr. Baker was a director?

A. It does, from the data that we had to deal with; that is, as far as the various data showed, it sets out the companies that Mr. Baker was a director or officer in.

Q. As far as it shows, it is correct?

MR. SEVERANCE: What is that?

MR. DICKINSON: It shows correctly as far as it goes, but

you did not undertake to carry it out to all of the directorates everywhere?

THE WITNESS: That is correct.

By MR. DICKINSON:

Q. And there may be some other concerns in which he was a director that are not shown here?

A. Yes; there may be others.

Q. But as to those that are shown, he is a director according to the sources of your information? That is correct?

A. Yes, sir.

Q. Have you indicated on this table the years in the respective companies for which he was a director?

A. Yes, sir.

Q. You have a letter "D" opposite certain companies. What does that indicate?

A. "D" stands for "Director." That is, it signifies that he was a director in that company for the year under which the "D" is placed there.

Q. You have a small letter "m" here in certain instances. What does that indicate?

A. The "m" is set forth at the bottom of the page there. I do not recall just what it signifies.

Q. Member of the board of managers?

A. Member of the board of managers.

Q. The note shows that at the bottom?

A. Yes.

Q. These notes at the bottom of the tables indicate, do they, what these letters used in the column respectively mean?

A. Yes, sir.

Q. There is a certain column headed "Date of Mileage & Capitalization." State what that is intended to show.

A. The years in that column show the year for which the data was taken from the Interstate Commerce Commission at Washington. That simply refers to railroad data.

Q. There are other columns showing single track, track operated and leased, and total mileage, mileage of proprietary lines, total mileage operated. Those are indicated,

are they, in the several columns, and for the years as indicated?

A. Yes; according to the headings there, and the year.

Q. State whether or not what I have asked you with regard to this paper headed "George F. Baker" applies to all the other papers?

A. It does apply to all of the others; yes, sir.

Q. State the sources of this information upon which these tables were made.

A. The body of the work originally was taken from the New York Directory of Directors, which has been issued for every year, as far as we looked for it, back to 1898. Then, also, from the Boston Directory of Directors, and the same for Cleveland, Pittsburgh, Philadelphia and Chicago.

Q. Just state what those directories of directors are.

A. The one published in New York gives a list of persons in New York City who are directors in one or more companies.

Q. Is it an annual publication?

A. It is an annual publication, and all of the companies in which that man is a director or officer are given under his name.

Q. Is that general statement true or not in regard to these other directories of directors, in the other cities?

A. I think it is true of the others, as far as we could find the directories; but there are very few directories for the other cities.

Q. As far as you used them, that is true?

A. Yes.

Q. What other sources of information did you have?

A. We used Moody's Manual back to 1900, which is the beginning of that issue, and back of that we used the Manual of Statistics.

Q. State what those two publications are.

A. Moody's Manual and the Manual of Statistics are publications containing railroad and industrial data, and it takes in all the corporations, different classes of corporations, and the officers and their capitalization, and a short history of the companies.

Q. Is that an annual publication?

A. An annual publication, yes.

Q. Go on and state what other sources, if any.

A. There may be a very few of these officers filled in from the Bankers' Register, which is published quarterly, and the railroad data are taken from the reports of the Interstate Commerce Commission at Washington.

Q. Did any one assist you in this work?

A. Mr. Baker.

Q. Is he present?

A. Present in the room, yes.

Q. Is this work correct according to your information, and have you exercised care in doing it?

A. Yes, so far as concerns the information I had at hand to work from. I might add there is one company, the Reading Company, which controls a number of miles of railroad. In regard to that the mileage is taken from Moody's Manual.

Q. Not from the Interstate Commerce Commission?

A. No.

Q. In the other cases it is taken from the Interstate Commerce Commission?

A. I am very sure it is, yes.

Q. Is that the only one you recall where it is not?

A. That is the only one I recall.

Q. The last sheet, Exhibit 423-x, what is the heading there?

A. It just has a heading, "Notes."

Q. What is the object of that sheet and what does it show?

A. Various railroads that are leased to other railroads given in the tables.

Q. What is the object of having that?

A. Simply to give as accurate an account of the various mileages and capitalizations as possible.

Q. How about the respective duplications of mileage?

A. That is one of the principal things that this list of notes was made up for, so that the mileages would not be duplicated; it would get around duplication in mileages shown in the tables themselves.

Q. The object was to prevent a duplication of mileage which might otherwise have been inferred?

A. Yes.

MR. DICKINSON: We offer these in evidence.

MR. SEVERANCE: Permit me to ask some questions before the offer is made.

MR. DICKINSON: Certainly.

CROSS EXAMINATION,

By MR. SEVERANCE:

Q. The last statement you made, you say it prevents duplication of mileage?

A. Yes.

Q. Look under the head of New York Central & Hudson River Railroad, on the sheet of George F. Baker. You see there "Total single track mileage operated 3,591.34."

A. Yes.

Q. "Total operated under contract, lease and trackage, all tracks, 5,615.77." What do those two mean?

A. The first column represents the total single track mileage.

Q. Well, of what; the New York Central proper or its subsidiaries?

A. That the New York Central operates. The second column represents the total track, that is all track, sidings, second, third and fourth tracks, of all tracks leased to the New York Central & Hudson River Railroad.

Q. Then do I understand, for instance, looking under these notes here—say the Syracuse, Geneva & Corning, that is leased to the New York Central. That is shown in the second column?

A. Shown in the second column.

Q. How is it in the case of some roads that you say are owned by others, how would that be shown?

A. The fourth column shows the total mileage owned outright—that is, stock ownership.

Q. Go on to the par value outstanding, capital stock and funded debt. Does that show in the case of the New York Central the funded debt of that company only and its capital stock, or of that company and its subsidiaries also?

A. I would not attempt to answer that question.

Q. It would make quite an important difference?

A. Yes.

Q. But you would not know which it is?

A. I would not attempt to answer that.

Q. All of your investigation into the matters stated in these tables 423-a to 423-x, inclusive, is made up from an examination of these various books that you have spoken of, either by you or some associate, is that correct?

A. Yes.

Q. You have no personal knowledge on the subject as to any of these matters?

A. No.

Q. Except what you found in those books?

A. Yes.

Q. And as to the accuracy of those books you know nothing?

A. No.

Q. Can you tell by looking at the table as to the source of any particular one of those items of information? That is, whether it is from one book or another? Take, for instance, under the heading of Mr. George F. Baker, Central Railroad of New Jersey; that is one of the early ones on the list. From what source did you get that information?

A. Is that under Baker?

Q. Yes; the ninth line of 423-a.

A. From 1901 to 1911 it was taken from the New York Directory of Directors; back of 1901; that is, 1898, 1899 and 1900, Mr. Baker, who is here in the room, obtained that data.

Q. Another Mr. Baker?

A. Yes; Mr. Baker, who is here in the room and who worked with me.

Q. You did not make any inquiry as to the character of the business carried on by these various companies outside of the railroad companies, did you?

A. No; there is nothing shown on here.

Q. Is there anything in the sources of your information that shows the character of the business?

A. Why, I could tell, from the information I received, a few of them, but there is nothing shown on here.

Q. What is the Jersey City Water Supply Company?

A. I could not say.

Q. What is the Industrial Trust Company of Providence?

A. That I do not know.

Q. It is not a dealer in steel products, so far as you know, is it?

A. No.

Q. Would you be able to go through this in detail—it may be a convenience to us to check them over—and give us the sources from which you obtained this information? Have you that some place where you can lay your hands on it?

A. Yes.

MR. SEVERANCE: I will not ask him to do that here, but if counsel are agreeable, I would like to have him furnish me informally, not on the stand, with a list containing such information.

THE WITNESS: I will do that.

RE-DIRECT EXAMINATION,

By MR. DICKINSON:

Q. You spoke of Mr. Baker examining certain things; state whether or not your work and his together cover the entire field.

A. Yes, it does.

Q. And what you did not cover, he did?

A. Yes.

Q. Have you been working together on the matter somewhat?

A. Yes.

MR. SEVERANCE: Now you make your offer?

MR. DICKINSON: Yes, we offer the tables in evidence.

MR. SEVERANCE: I object to them and each of them as incompetent, irrelevant, immaterial, and as hearsay.

(The tables were thereupon marked "Government Exhibit No. 423-a, March 19, 1913" to "Government Exhibit No. 423-x, March 19, 1913," inclusive, and will be found in the volume of exhibits.)

By Mr. Dickinson:

Q. Have you not made up a table showing the total mileage of all the railroads operated in the United States; and if so, for what year?

A. I have made up this table; it is for the year 1911.

Q. From what sources did you make that up?

A. It is taken from the 1911 report of the Interstate Commerce Commission, Washington.

Mr. Dickinson: I ask to have it marked for identification.

(The table was thereupon marked "Government Exhibit No. 424, for identification.)

Mr. Dickinson: I now offer it in evidence.

Mr. Severance: We object to it as incompetent, irrelevant, immaterial and as hearsay.

(The table entitled "Table of Entire Railroad Mileage operated in the United States for the year 1911" was thereupon marked "Government Exhibit No. 424, March 19, 1913," and will be found in the volume of exhibits.)

Mr. Severance: I understand that Mr. Baker, who assisted in the preparation of these tables, is present in the room; and, if called, it is agreed that he would testify in substance the same as Mr. Simmons?

Mr. Dickinson: Yes.

With the understanding that the Government may offer in evidence, as of to-day, a summary of certain information relating to ore, as of the close of the year 1904, furnished by the United States Steel Corporation to the Bureau of Corporations of the United States, in the course of its investigation into the steel industry; and that the right is also reserved to put in evidence as of to-day one or more of the ore reserve books which the Corporation turned over to Mr. Colton for examination; it being further understood that notice will be given to opposing counsel on or before March 27th as to which of said items counsel for the Government desires to offer in evidence, the understanding being that the ore reserve books (or such parts thereof as Counsel for either side may request to have printed) shall be printed as special exhibits; the Government now rests its case.

Mr. Dickinson: Pursuant to the foregoing understanding, I offer in evidence the following Ore Reserve Books of the United States Steel Corporation: Ore Reserves of the

United States Steel Corporation on Lake Superior Ranges, January, 1904, Special Exhibit No. 5, Lake Superior District, Estimates of Developed Ore Reserves and Probable Ore Controlled by the United States Steel Corporation, dated October 5, 1905, Special Exhibit No. 6, Ore Reserves of the United States Steel Corporation on Lake Superior Ranges January 1, 1906, Special Exhibit No. 7, Ore Reserves of the United States Steel Corporation in Lake Superior District January 1, 1908, Special Exhibit No. 8, Ore Reserves of the United States Steel Corporation in the Lake Superior District, January 1, 1910, Special Exhibit No. 9.

MR. LINDABURY: This offer is objected to for the reason that the Ore Reserve books themselves show that vast quantities of presently non-merchantable ore are included and not differentiated. For the further reason that no estimate made by a similar method of the Ore Reserves of the competitors of the United States Steel Corporation has been proven, and that therefore these Ore Reserve books are valueless to show the proportionate interest of the Steel Corporation in the ores of the Lake Superior district, and that therefore said books are irrelevant and immaterial in this case.

(The books referred to are marked "Special Exhibit No. 5" to "Special Exhibit No. 9," inclusive.)

STIPULATION.

IT IS STIPULATED AND AGREED by and between counsel for the petitioner and counsel for the defendants, represented by Lindabury, Depue & Faulks, that, in 1907, in the course of the investigation by the Bureau of Corporations into the steel industry a statement of developed and undeveloped mines in detail as of December 31, 1904, was submitted by the United States Steel Corporation to said Bureau, and that the attached summary correctly shows in tabular form the information given in the said statement as to tonnage of ore and as to the iron and phosphorus content thereof, as well as acreage and (where land is held under lease) the royalty payable on ore mined.

IT IS FURTHER STIPULATED that no mines in which the United States Steel Corporation has less than a majority interest are included herein, nor are ore properties included herein if they were not then, according to said statement, sufficiently developed to permit an estimate to be made.

Dated, New York, March 24, 1913.

J. M. DICKINSON,
HENRY E. COLTON,
Special Assistants to the Attorney-General.

LINDABURY, DEPUE & FAULKS,
by D. A. REED.

(The papers referred to in the above stipulation were marked "Government Exhibit No. 425," and will be found in the Volume of Exhibits.)

MR. MURRAY: The defendants Rockefeller join with the defendant Steel Corporation in all objections to testimony heretofore made on grounds of competency, materiality or relevancy, and on their behalf I make the same objections. The Government having now closed its case, on behalf of the defendants Rockefeller I move to dismiss the petition as against them and for non-suit as against them on the following grounds:

1. That the defendants Rockefeller are not proper parties to the proceeding and are not parties necessary to the complete determination thereof.

2. That on the case made by the Government, the Government is not entitled to any relief as against the defendants Rockefeller or either of them.

(Whereupon, an adjournment was taken, subject to notice.)